NEW JERSEY REGISTER

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ISSUE DATE: JUNE 2, 2008

RULE ADOPTIONS

COMMUNITY AFFAIRS
NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

40 N.J.R. 2690(a)

Adopted Amendment: N.J.A.C. 5:94-1.2

Adopted New Rules: N.J.A.C. 5:97

Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning on December 20, 2004 and the Period Beginning on June 2, 2008

Proposed: January 22, 2008 at 40 N.J.R. 237(a)

Adopted: May 6, 2008 by the New Jersey Council on Affordable Housing, Lucy Voorhoeve, Executive Director.

Filed: May 8, 2008 as R.2008 d.145, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3) **and the proposed repeal of N.J.A.C. 5:94 not adopted**.

Authority: N.J.S.A. 52:27D-301 et seq.

Effective Date: June 2, 2008

Expiration Date: December 20, 2009, N.J.A.C. 5:94;

June 2, 2013, N.J.A.C. 5:97

The proposed rules were published in the New Jersey Register on January 22, 2008. The 60-day comment period closed on March 22, 2008.

Summary of Hearing Officer Recommendations and Agency Responses:

In addition to accepting written public comments, the Council held five public hearings on January 24, 2008 at Rutgers University Student Center, 326 Penn Street, Camden, New Jersey; January 28, 2008 at the Lincoln Park Administration Building, Jersey City, New Jersey; January 30, 2008 at the Wayne Public Library, 461 Valley Road, Wayne, New Jersey; February 5, 2008 at the Hunterdon County Route 12 Complex, Flemington, New Jersey; and February 6, 2008 at the Monmouth County Library, 125 Symmes Drive, Manalapan, New Jersey. The hearing officers

for each of the public hearings were as follows: Lucy Voorhoeve, Camden; Joseph Doria, Jersey City, Wayne and Flemington; and Charles Richman, Manalapan. No recommendations were made by the hearing officers. The hearing transcripts are available at the Council's offices at 101 South Broad Street, 7th Floor, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

The Council received 612 sets of written comments and public statements from the following individuals or organizations:

1. Adams, Dr. J. Michael, Fairleigh Dickinson University, Teaneck, NJ

2. Affel, Ellen F., Cranbury, NJ

3. Agazzi, Myrta, Piscataway, NJ

4. Aizley, Cheryle, Cranbury, NJ

5. Alexander, Stephen J., Mayor, Upper Freehold Township, NJ

6. Alexander, Tracey, Habitat for Humanity, Newark, NJ

7. Alfano, Joseph and Susan, Cranbury, NJ

8. Ali, Karen, New Jersey Hospital Association, Princeton, NJ

9. Allen, Carolyn, Somerset Valley Rehabilitation and Nursing Center, Bound Brook, NJ

10. Allen, Judith, Delaware Township, NJ

11. Allen, Julia, Readington Township Committee, NJ

12. Alls-Moffatt, Murial, Borough of Riverton, NJ

13. Anderson, Deanna, Cranbury, NJ

14. Arezzo, George, Care One at Morris, NJ

15. Argiriou, Kathleen, Cranbury, NJ

16. Arnold, Robert, CP Lodges, Passaic, NJ

17. Aronson, Tod, Van Dyk Healthcare, Hawthorne, NJ

18. Arpajian, George, Cranbury, NJ

19. Asay, Donald C., Mayor, Township of Mannington, NJ

20. Asefaha, Tsega, Genesis Health Care Center, South Orange, NJ

21. Asha, Cranbury, NJ

22. Augustino, Thomas, Moorestown, NJ

23. Augustyn, Joseph S., Alaimo Group, Mount Holly, NJ

24. Avis, Gregory, Cranbury, NJ

25. Bagwell, Clarence H., Respond Inc., NJ

26. Bahooshian, Michael, Genesis Health Care Center, Plainfield, NJ

27. Barbeau, Maryse, CAE SimuFlite Inc., Whippany, NJ

28. Barra, Vince, Mayor, Allendale Borough, NJ

29. Barrantes, Adrian, Bound Brook, NJ

30. Baruch, Wayne, The Artisans Group, Hillsborough, NJ

31. Batesko, Danielle, Jackson, NJ

32. Bator, Elizabeth, Genesis Health Care Center, Wilkes Barre, PA

33. Bauder, William E. and Constance H., Fiddlehead Farms, Cranbury, NJ

34. Bayer, Andrew, on behalf of Hillsborough Township, NJ

35. Bayer, Andrew, on behalf of Holmdel Township, NJ

36. Bayer, Andrew, on behalf of the Borough of Tinton Falls, NJ

37. Beamer, Lisa, Cranbury, NJ

38. Beckford, Bonnie, Cranbury, NJ

39. Beder, Adam, Solaris Health System, Edison, NJ

40. Bedford, Dana, Genesis Health Care Center, Eatontown, NJ

41. Bedner, Richard, Habitat for Humanity, Somerville, NJ

42. Bell, Elaine, Genesis Health Care Center, Phillipsburg, NJ

43. Bell, James M., on behalf of East Greenwich Township, NJ

44. Bell, James M., on behalf of Mantua Township, NJ

45. Bell, James M., on behalf of Monroe Township, NJ

46. Bell, James M., on behalf of West Deptford Township, NJ

47. Bell, James M., on behalf of Woolwich Township, NJ

48. Bell, James N., Group Melvin Design, Woodbury, NJ

49. Bellan-Boyer, Paul, NJ Regional Coalition, NJ

50. Bergailo, Cheryl, on behalf of the Borough of Swedesboro, NJ

51. Bergailo, Cheryl, Taylor Design Group, Inc., Mount Laurel, NJ

52. Bergen County Leage of Municipalities, c/o Haworth Borough, NJ

53. Berger, Richard G., Russo Development, Hackensack, NJ

54. Berkowsky, Mark A., Cranbury Housing Associates, Inc., Cranbury, NJ

55. Bernard, Art, on behalf of the NJ Builders Association

56. Bernier, Roger, Raritan, NJ

57. Bickel, Richard G., Delaware Valley Regional Planning Commission, Philadelphia, PA

58. Bickford, Ernest A., Mayor, Township of Pilesgrove, NJ

59. Bieri, Bettina, Mayor, West Milford Township, NJ

60. Birge, Cecilia Xie, Mayor, Montgomery Township, NJ

61. Bishop, Shirley, on behalf of Edison Township, NJ

62. Blum, Wayne, Bridgeway Senior Care, Bridgewater, NJ

63. Boccher, Edward J., on behalf of Fort Lee Borough, NJ

64. Boccher, Edward J., on behalf of Phillipsburg Town, NJ

65. Bodenstein, Jerry, Isles, Inc., NJ

66. Bogdan, Josef, Hamilton Continuing Care, Hamilton, NJ

67. Bolan, Michael, on behalf of Harrison Township, NJ

68. Bollwage, J. Christian, Mayor, City of Elizabeth, NJ

69. Bonwell, Raymond, Cranbury, NJ

70. Borough of Bloomsbury, NJ

71. Borough of Ho-Ho-Kus, NJ

72. Borough of Hopewell, Hopewell, NJ

73. Botta, Christopher C., Mayor, Borough of Ramsey, NJ

74. Boyles, Walter, Cranbury, NJ

75. Bozich, Amy, Cranbury, NJ

76. Branchburg Township Committee, NJ

77. Brancheau, Blais, Newton, NJ

78. Brosnan, Mark J., CareOne at Wall, NJ

79. Brown, Matthew A., Cranbury, NJ

80. Browning, Mary Lou, Medicenter, Neptune, NJ

81. Bryson, Natalie, Genesis Health Care Center, Cedar Grove, NJ

82. Buckley, Liz, Township of Cedar Grove, NJ

83. Burgis, Joseph H., on behalf of Alpine Borough, NJ

84. Burgis, Joseph H., on behalf of Atlantic Highlands Borough, NJ

85. Burgis, Joseph H., on behalf of Fairfield Township, NJ

86. Burgis, Joseph H., on behalf of Mahwah Township, NJ

87. Burgis, Joseph H., on behalf of Parsippany-Troy Hills Township, NJ

88. Burgis, Joseph H., on behalf of Rockaway Township, NJ

89. Burgis, Joseph H., on behalf of the Borough of Hawthorne, NJ

90. Burgis, Joseph H., on behalf of the Borough of Oradell, NJ

91. Burgis, Joseph H., on behalf of the Borough of Teterboro, NJ

92. Burgis, Joseph H., on behalf of the City of Garfield, NJ

93. Burgis, Joseph H., on behalf of the Gavin Group, LLC, NJ

94. Burgis, Joseph H., on behalf of Upper Saddle River Borough, NJ

95. Burgis, Joseph H., on behalf of Westwood Borough, NJ

96. Burke, James, Deputy Mayor, Kingwood Township, NJ

97. Burt, Carol, Bedminster, NJ

98. Buzak, Edward J., The Buzak Law Group, LLC, Montville, NJ

99. Byrne, Francis J., NJ Association of Homes and Services for the Aging, Princeton, NJ

100. Caccia, J. Donald, AtlantiCare, Egg Harbor Township, NJ

101. Callahan, Karen, Cranbury, NJ

102. Callandrillo, Gail, The Valley Hospital, Ridgewood, NJ

103. Cantu, Peter A., Mayor, Township of Plainsboro, NJ

104. Canuso, John B., Canuso Communities, Haddonfield, NJ

105. Carman, Betty Ann, Cranbury, NJ

106. Carney, Brent T., Maraziti Falcon & Healey, Short Hills, NJ

107. Carpenter, John, Mayor, Township of Bernards, NJ

108. Caruso, Bill, Clark Senior Corp., NJ

109. Casey, Patricia K., Cranbury, NJ

110. Castleman, Suzanne S., Mayor, Borough of Little Silver, NJ

111. Cayci, Karen L., on behalf of Princeton Borough, NJ

112. Chadwick, John, on behalf of Warren Township, NJ

113. Chase, Theodore Jr., Chair, Franklin Township Planning Board, NJ

114. Chen, Ronald K., NJ Public Advocate, Trenton, NJ

115. Chen, Youyi, Cranbury, NJ

116. Cho, Monica Y., Gregg F. Paster & Associates, Hackensack, NJ

117. Cicchino, Steven, East Orange, NJ

118. Clarkin, James F., on behalf of Piscataway Township, NJ

119. Clegg, Ken, South Bound Brook, NJ

120. Cody, Winthrop, Cranbury, NJ

121. Cogger, William A., Mayor, Township of Chester, NJ

122. Collins, Toi, Affordable Housing Alliance, Eatontown, NJ

123. Coniglione, Anthony J., Cranbury, NJ

124. Cook, Angie, Cranbury, NJ

125. Cook, Brian, Bartley Healthcare, Jackson, NJ

126. Corcodilos, Nick, Mayor, Township of Clinton, NJ

127. Corcoran, Steven, Township of Delanco, NJ

128. Cortright, Arlene and David L., Cranbury, NJ

129. Cosentino, Frank C., Fort Monmouth Economic Revitalization Planning Authority, Eatontown, NJ

130. Costa, Estella, Jackson, NJ

131. Coyle, Cheryl, Cranbury, NJ

132. Coyle, Joseph P., Southern Ocean County Hospital, Manahawkin, NJ

133. Craft, Susan E., NJ TDR Bank, Trenton, NJ

134. Cramer, Richard, on behalf of the Borough of Eatontown, NJ

135. Cramer, Richard, on behalf of the Borough of Red Bank, NJ

136. Cramer, Richard S., on behalf of Linden City, Middletown, NJ

137. Cranbury Township Committee, NJ

138. Cruz, Albert E., DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis and Lehrer, Warren, NJ

139. Cucciniello, Marjorie, Hospicomm, Berkeley Heights, NJ

140. Cureton, Richard J., Whitesell Construction, Delran, NJ

141. Cuviello, Tiffany A., Township of Galloway, NJ

142. Dabulas, Diane, on behald of Manalapan Township, NJ

143. Dahl, Stephen M., K Hovnanian Homes, Edison, NJ

144. Davidson, Bruce, Lutheran Office of Government Ministry, Trenton, NJ

145. Davis, Joseph M., Benderson Development Company, South Orange, NJ

146. Davis, Keith, Sewell, NJ

147. Davison, Walter J., Mayor, Borough of Ringwood, NJ

148. De Muro, Patricia, Bartley Healthcare, Jackson, NJ

149. DeBona, Paula J., Jansen & DeBona, LLC, Boonton, NJ

150. Dech, David, County of Warren, NJ

151. Del Vecchio, Antimo A., Beattie Padovano, Montvale, NJ

152. DeMilt, Richard M., Cranbury, NJ

153. Dempski, David, Mayor, Washington Township (Warren County, NJ)

154. D'Eramo, Paul, Cranbury, NJ

155. DeRienzo, John, Mayor, Borough of Haworth, NJ

156. DesJardin, Meghan, Bartley Healthcare, Jackson, NJ

157. Diamond, Robert, Cranbury, NJ

158. Dickey, Raymond, Brainerd Communications Inc., Cranbury, NJ

159. Dietrich, Paul E., Upper Township, Tuckahoe, NJ

160. Donadio, John, Atria Senior Living, Tinton Falls, NJ

161. Donadio, MaryEllen, Manasquan, NJ

162. Dougherty, Linda, Township of Edgewater Park, NJ

163. Dowling, Telissa, National Low Income Housing Corporation

164. Doyle, Scarlet, Flemington, NJ

165. Drago, Anna, Cranbury, NJ

166. Drake, Paul M., Gladstone Design, Inc., Gladstone, NJ

167. Dredger, Sharon, Cranbury, NJ

168. Driscoll, Debbie, Cranbury, NJ

169. Drozd, Elaine, Bartley Healthcare, Jackson, NJ

170. D'souza, Ryan, Cranbury, NJ

171. Duchak, Douglas A., Englewood Hospital and Medical Center, Englewood, NJ

172. Duffy, Kevin, Mayor, Hardwick Township, NJ

173. Dugenio, Jon, Bridgeway Senior Care, Bridgewater, NJ

174. Dunn, Barbara, Paterson Habitat for Humanity, Paterson, NJ

175. East Brunswick Township, East Brunswick, NJ

176. Ecker, Matthew V., on behalf of Buena Borough, NJ

177. Ehrenclou, Cynthia D., Upper Raritan Watershed Association, Gladstone, NJ

178. Ehrenreich, Joel, New Grove Manor, East Orange, NJ

179. Elich, Heidi, Seacrest Village, Little Egg Harbor, NJ

180. Elliott, Patricia, CHCC, Wyckoff, NJ

181. Ellsworth, Dina E. and Ken, Cranbury, NJ

182. Emiliani, Elaine, Mayor, Greenwich Township, NJ

183. Engram, Jacqueline, Sayreville, NJ

184. Escovar, Joanne, Care One at Jackson, Jackson, NJ

185. Faiello, Joan, Stockton, NJ

186. Famiglietti, Anthony, Cranbury, NJ

187. Feigenbaum, Avi, Ocean Healthcare, Lakewood, NJ

188. Fennessy, Conor, New Jersey Apartment Association, Trenton, NJ

189. Finigan, Bob and Karen, Cranbury, NJ

190. Fishbone, Scott, Atkins Realty Group, NJ

191. Fittz, Joan, New Jersey Manufactured Housing Association, Trenton, NJ

192. Fitzpatrick, Alison, Care One, NJ

193. Flach, Jerry, Haledon, NJ

194. Flannery, Patricia, Mayor, Bridgewater Township, NJ

195. Fliss, Albert, Cranbury, NJ

196. Fogel, Sheri, Kendall Park, NJ

197. Forlenza, Vincent A., The Valley Hospital, Allendale, NJ

198. Francis, Colandus, Camden County NAACP

199. Fredon Township, NJ

200. Frey, Betty, Bloomingdale, NJ

201. Frey, Wilma, NJ Conservation Foundation, Far Hills, NJ

202. Frezza, Buddy, Tequesta, FL

203. Friedman, Nathan, Woodcliff Lake Health and Rehabilitation, Woodcliff Lake, NJ

204. Frohbieter, Jack A., Cranbury, NJ

205. Furey, Leah, Bach Associates, Haddon Heights, NJ

206. Furman, Steven, CP Lodges, Bloomfield, NJ

207. Fyfe, Roger, Mayor, Borough of Montvale, NJ

208. Gaffney, Paul G., Monmouth University, West Long Branch, NJ

209. Gagnon, Kim, Manasquan, NJ

210. Gentile, Michael, Care One at King James, Atlantic Highlands, NJ

211. Gerberich, Beverly and James, Cranbury, NJ

212. Gianetti, Craig M., Giordano Halleran and Ciesla, P.C., Red Bank, NJ

213. Gibbons, David, Habitat for Humanity of Northeast Monmouth County, Long Branch, NJ

214. Gilroy, Margaret, North Haledon, NJ

215. Giordano, Dawn, Bartley Healthcare, Whiting, NJ

216. Goldberg, Carl J., Roseland Property Company, Short Hills, NJ

217. Goldfischer, Robin, Valley Health System, Ridgewood, NJ

218. Goldman, Kenneth M., South Jersey Legal Services, Inc., Egg Harbor Township, NJ

219. Golisano, Jean-Marie, Cranbury, NJ

220. Gonzalez, James, UMDNJ, Newark, NJ

221. Gordon, Adam, Fair Share Housing Center, Cherry Hill, NJ

222. Gordon, Ken, Cranbury, NJ

223. Gottesman, Randall M., Affordable Housing Professionals of NJ

224. Graefe, John, Mayor, Township of Bethlehem, NJ

225. Grbelja, Nancy, Mayor, Township of Millstone, NJ

226. Gregory, Kathryn M., on behalf of Edgewater Borough, NJ

227. Gribbin, John T., CentraState Healthcare System, Freehold, NJ

228. Gross, Suzanne, Cranbury, NJ

229. Gruel, Susan S., on behalf of the City of Summit, NJ

230. Grundy, Donna and Jeff, Cranbury, NJ

231. Gu, Hong, Cranbury, NJ

232. Guenther, Philip J., Mayor, City of Brigantine, NJ

233. Guidi, Lawrence, Cranbury, NJ

234. Gural, Dawn, Jackson, NJ

235. Hager, Fritz, Cranbury, NJ

236. Hakim, Michael G., Hakim Associates, Harrington Park, NJ

237. Halaby, Cynthia J., The Valley Hospital, Ridgewood, NJ

238. Halari, Bhaskar, Concept Engineering, NJ

239. Hardwick Township Committee, NJ

240. Hardyston Township, NJ

241. Hauck, Robert B., Mayor, Borough of Flemington, NJ

242. Hauschild, Anne and Jim, Cranbury, NJ

243. Healey, Mark A., Township of Franklin, NJ

244. Healy, Jerramiah T., Mayor, Jersey City, NJ

245. Heilbronn, Andrew & Diana, Cranbury, NJ

246. Hellstern, Richard and Kathleen, Cranbury, NJ

247. Herb, Jeanne, NJ Department of Environmental Protection, NJ

248. Hersh, Pamela, Princeton HealthCare System, Princeton, NJ

249. Heyer, Gruel & Associates, on behalf of the City of Asbury Park, NJ

250. Hirsch, Kimberly, Cranbury, NJ

251. Hochradel, Mary, Genesis Healthcare Center, Parsippany, NJ

252. Hoey, Bob, Bartley Healthcare, Bricktown, NJ

253. Hoffmann, Carol S., Deputy Mayor, Alexandria Township, NJ

254. Holczer, Margaret, Wantage, NJ

255. Holloway, Brian T., Seacrest Village Nursing and Rehab, Little Egg Harbor, NJ

256. Holloway, Terrance, Seacrest Village, Little Egg Harbor, NJ

257. Holmes, Charles and Janis, Cranbury, NJ

258. Holtaway, Robert F., Mayor, Bedminster Township, NJ

259. Hone, Basil T., Citizen to Save Tewskbury, NJ

260. Hopkins, Jan, Phillipsburg, NJ

261. Hornik, Jonathan L., Mayor, Township of Marlboro, NJ

262. Horton, William H., Mayor, Borough Peapack and Gladstone, NJ

263. Housing and Community Development Network of NJ

264. Howard, Heather, Commissioner, Department of Health and Senior Services, Trenton, NJ

265. Hoyt, Kenneth L., Centenary College, NJ

266. Huang, Jason, Cranbury, NJ

267. Hughes, Richard, Mayor, Township of Lafayette, NJ

268. Hugues, Mary P., Virtua Health, Marlton, NJ

269. Ierley, Pat, Cranbury, NJ

270. Izzo, Steve, Inglemoor, Livingston, NJ

271. Jablonowski, Gerard J., St. Francis Medical Center, Trenton, NJ

272. Jacobson, Joel N., Chair, Chatham Township Planning Board, NJ

273. Janovitz, Evan, Cranbury, NJ

274. Jedziniak, Michael

275. Jeffries, Rosemary E., Georgian Court University, Lakewood, NJ

276. Jersey City Affordable Housing Coalition, Jersey City, NJ

277. Jezierny, Karen, Princeton University, Princeton, NJ

278. Johnson, Celeste M., South Jersey Health Care Center, Camden, NJ

279. Jones, Dominique, Cranbury, NJ

280. Jones, Jennifer, Genesis Health Care Center, Ewing, NJ

281. Joshi, Jiten and Anita, Cranbury, NJ

282. Kadar, Nicholas, Cranbury, NJ

283. Kadish, Mike, Bergen County Habitat for Humanity, NJ

284. Kaes, Loretta, Forked River, NJ

285. Kafasis, Nicholas, Cranbury, NJ

286. Kamer, Lynda, Lawrenceville, NJ

287. Kantowitz, Jeffrey, Goldberg, Mufson & Spar, West Orange, NJ

288. Kapotes, Nicholas, Mayor, Township of Pequannock, NJ

289. Karstetter, Brian, CP Lodges, Middletown, CT

290. Kasabach, Peter, New Jersey Future, Trenton, NJ

291. Kenny, David J., on behalf of The Tiger Inn, Princeton, NJ

292. Kent-Smith, Henry, Buchanan Ingersoll and Rooney, Princeton, NJ

293. Kietlinski, Ed and Nancy, Cranbury, NJ

294. King, John, Mayor, Township of Raritan, NJ

295. Kinsey, David, Kinsey & Hand, Princeton, NJ

296. Klein, Michael A., Cranbury, NJ

297. Klepner, Leonard M., Township of Bordentown, NJ

298. Klocke, Brian J., Kennedy Health Facilities, Sewell, NJ

299. Knowlton Township Committee, NJ

300. Kochte, Renee, Toms River, NJ

301. Koenig, Stuart, Stickel, Koenig & Sullivan, Cedar Grove, NJ

302. Kohut, Andrew, Well Javerski & Liebman

303. Kondracki, Mark and Kim, Cranbury, NJ

304. Korzun, Timothy, Chairman, Lambertville City Planning Board, NJ

305. Kowal, Stephen, Plainsboro, NJ

306. Kratz, Gary, Borough of Waldwick, NJ

307. Krawczun, Richard S., Township of Lawrence, NJ

308. Kubrak, Joe, Hillsborough, NJ

309. Kunukkasseril, Laura, Cranbury, NJ

310. LaBadie, Christine, Hackettstown Business Improvement District, NJ

311. Landel, Robert E., on behalf of Wyckoff Township, NJ

312. Langevin, Paul, Health Care Association of New Jersey

313. LaPaglia, Joseph T., Pascack Valley Mayors Association, Woodcliff Lake, NJ

314. Larson, Mary Ellen, Cranbury, NJ

315. Lechner, Kenneth D., Township of Gloucester, NJ

316. LeDonne, Susan and Vince, Cranbury, NJ

317. Lefsky, Marta, Township of Woodbridge, NJ

318. Lehman, Kelly and Sheldon, Cranbury, NJ

319. Lelie, Kendra, on behalf of the Borough of Rockleigh, NJ

320. Leonard, James F., NJ Chamber of Commerce, Trenton, NJ

321. Leven, Andrew, Bridgewater, NJ

322. Levine, Herbert, Mercer Alliance to End Homelessness, Lawrenceville, NJ

323. Li, Jennifer, Cranbury, NJ

324. Liggett, Larry, NJ Pinelands Commission, New Lisbon, NJ

325. Liggio, Kerrie, Cranbury, NJ

326. Lijoi, Peter B., Fairfield Residential, Summit, NJ

327. Lin, Frank B., Cranbury, NJ

328. Lin, John C.

329. Lindberg, Keith and Mia Manley, Cranbury, NJ

330. Lipschutz, Jeffrey and Alyse, Cranbury, NJ

331. Liu, Shaolin, Cranbury, NJ

332. Lonergan, Mary Beth, on behalf of Florence Township, NJ

333. Long, Patti, Cranbury Historical and Preservation Society, Cranbury, NJ

334. Lory, Marc H., Meridian Health, Neptune, NJ

335. Lynch, Jay, Township of Toms River, Toms River, NJ

336. Maio, Maria, Jersey City Housing Authority, NJ

337. Majeski, Sandra, Cranbury, NJ

338. Manasso, Alison, Chelsea Senior Living, Manalapan, NJ

339. Mancuso, Donna, Robert Wood Johnson University Hospital, Rahway, NJ

340. Manley, Jim and Catherine, Cranbury, NJ

341. Manville Borough Council, NJ

342. Maraziti, Joseph J., Maraziti Falcon and Healey, Short Hills, NJ

343. Mariconda, Mary, Pompton Lakes, NJ

344. Markowits, Alexander C., Spring Hills, Woodbridge, NJ

345. Marlowe, Frank, Cranbury, NJ

346. Martin, Robert, Mayor, Borough of Riverton, NJ

347. Martin, Theresa M., Felician College, Lodi, NJ

348. Mathez, Rene, Knowlton Township Committee, NJ

349. Mavoides, Susan, Cranbury, NJ

350. Mawn, Lawrence and Marlynne, Cranbury, NJ

351. Mazejy, Patricia, Bartley Healthcare, Jackson, NJ

352. McCarthy, Kristin, Deputy Mayor, Delaware Township Committee, NJ

353. McCollister, Douglas, Parker McCay, NJ

354. McConnell, Kevin, Cranbury, NJ

355. McDonald, William A., St. Joseph's Regional Medical Center, Paterson, NJ

356. McGrath, Chris, NJ Self Storage Association, Albany, NY

357. McGroarty, Chuck, Banisch Associates, Inc., Flemington, NJ

358. McGuinness, Michael, National Association of Industrial and Office Properties (NAIOP), New Brunswick, NJ

359. McHale, Matthew P., Mayor, Borough of Dumont, NJ

360. McKenzie, Elizabeth C., on behalf of Wyckoff Township, NJ

361. McKenzie, Elizabeth C., on behalf of the Borough of Haddonfield, NJ

362. McKenzie, Elizabeth C., Elizabeth C. McKenzie, PP, PA, Flemington, NJ

363. McKenzie, John P., Cranbury, NJ

364. McKeon, John F., Mayor, Township of West Orange, NJ

365. McNeil, Mike, NAACP, Lakewood, NJ

366. Meiterman, Bernard

367. Metzheiser, Beth and Dave, Cranbury, NJ

368. Michaels, Robert A., Borough of Florham Park, NJ

369. Michaud, Roger, Mayor, Township of Green, NJ

370. Miezin, Raymond and Wendy, Cranbury, NJ

371. Miller, Bob and Mary, Cranbury, NJ

372. Miller, Eileen, Hillsborough, NJ

373. Miller, Thomas, Lawrenceville NR, Moorestown, NJ

374. Milton, Gene C., Hackettstown Regional Medical Center, Hackettstown, NJ

375. Mironov, Janice S., Mayor, Township of East Windsor, NJ

376. Mitko, John and Donna, Cranbury, NJ

377. Moles, Daniel, Monroe Township, NJ

378. Montgomery, Carleton, Pinelands Preservation Alliance, Southampton, NJ

379. Moody, Mary M., Professional Planner, Branchburg, NJ

380. Morgan, John, Mayor, Borough of Andover, NJ

381. Morgan, John P., Mayor, Borough of Farmingdale, NJ

382. Morgan, Ronald, Esq., Parker McCay P.A., Marlton, NJ

383. Morgenstern, Robert T., on behalf of Hampton Township, NJ

384. Morris County Planning Board, Morristown, NJ

385. Morris, Joseph I., Mountainside Hospital, Montclair, NJ

386. Mortara, Robert, Robin Hill/Countryside, Ringoes, NJ

387. Mullen, James P., Pulte Homes, Bernardsville, NJ

388. Mulligan, Dan, Cranbury, NJ

389. Murphy, Martin F., Johnson, Murphy, Hubner, McKeon, Wubbenhorst, Bucco & Appelt, Riverdale, NJ

390. Murphy, Richard G., Trammell Crow Residential, Morristown, NJ

391. Murray, Richard E., Kennedy Health System, Voorhees, NJ

392. Nametko, Joseph A., Mayor, Borough of Netcong, NJ

393. Natyzak, Debra, Johnsonburg, NJ

394. Nergaard, Maryann L., on behalf of Harding Township, NJ

395. Newcomb, Charles, Banisch Associates, Flemington, NJ

396. Newman, Michelle, Cranbury, NJ

397. Newmark, Dov, Lakewood, NJ

398. Nieuwenhuis, Richard, New Jersey Farm Bureau, Trenton, NJ

399. Norbury, Michael, Bey Lea Village, Toms River, NJ

400. Nordahl, Bill, Concerned Citizens Coalition, Long Branch, NJ

401. Norland, Betsey, Cranbury, NJ

402. Nowack, Andy, Premier Development and Affiliates, LLC

403. Nuss, John, Wantage, NJ

404. Oake, Roy

405. Ochoa, Manny & Valerie, Cranbury, NJ

406. Opel, Elizabeth S., Kennedy Health, Sewell, NJ

407. Oppelt, Joanne, Community Access Unlimited, Elizabeth, NJ

408. Otero, Veronica, Piscataway, NJ

409. Otero-Revilla, Sandra, Piscataway, NJ

410. Palumbo, Kelly, Cranbury, NJ

411. Pantel, Glenn S., on behalf of Erickson Retirement Communities

412. Pantel, Glenn S., on behalf of Matrix Development Group and IDI

413. Papazian, Aram, Alexandria Township Planning Board, NJ

414. Pascale, Connie, Legal Services of NJ, Edison, NJ

415. Pastore, Joanna, Genesis Health Care Center, Burlington, NJ

416. Paul, Doug

417. Pawlak, Lloyd, AP Images, New York, NY

418. Pelligrino, Anthony, Bridgeway Senior Care, Bridgewater, NJ

419. Pelligrino, Donald, Bridgeway Senior Care, Bridgewater, NJ

420. Perillo, Sal, Mayor, City of Ocean City, NJ

421. Perschilli, Anthony, Mayor, Borough of Pennington, NJ

422. Peterson, Patricia, St. Mary's Hospital, Passaic, NJ

423. Peterson, Ralph, Mayor, City of Pleasantville, NJ

424. Phoebus, Gail, Mayor, Township of Andover, NJ

425. Phoel, Dolores M., Toms River, NJ

426. Piazza, Frank, Piazza & Associates, Princeton, NJ

427. Pinto, Jack and Karen, Cranbury, NJ

428. Ploskonka, John, Concept Engineering

429. Porraro, Peter, Tramwell Crow Residential, Morristown, NJ

430. Povisils, Karlis, Casino Reinvestment Development Authority, NJ

431. Pressey, Jeanie, Genesis Health Care Center, Monmouth Junction, NJ

432. Pringle, David, NJ Environmental Federation, Cranford, NJ

433. Puhak, Robert I., Mayor, Cranford Township, NJ

434. Purcell, Monique, NJ Department of Agriculture, Trenton, NJ

435. Quinn, Laurel, Cranbury, NJ

436. Racioppi, Carolyn, Bridgewater, NJ

437. Rackin, Gregg, Hunterdon County Planning Board, Flemington, NJ

438. Raftery, Sister Francis, College of Saint Elizabeth

439. Raia, Samuel S., Mayor, Borough of Saddle River, NJ

440. Ramos, Natalie, Glassboro, NJ

441. Ransegnola, Lori, Cranbury, NJ

442. Raritan Borough Council, NJ

443. Ratcliffe, Denise, CHCC, Wyckoff, NJ

444. Readington Township Committee, NJ

445. Reeve, Noelle, PlanSmart NJ, Trenton, NJ

446. Reiter, Caroline, on behalf of Hillsdale Borough, NJ

447. Reiter, Caroline, Statile Associates, Oakland, NJ

448. Remsa, Mark A., Burlington County Board of Chosen Freeholders, Mount Holly, NJ

449. Repoli, David, Woodcrest Health Care Center, New Milford, NJ

450. Retz, Joseph, Jaret Builders, Wantage, NJ

451. Revicky, Bernadette, Flemington, NJ

452. Reyes, Carlene, Cranbury, NJ

453. Rhodes, Edward

454. Richardson, Phil, Westfield, NJ

455. Richardson, Viola, Jersey City Council, NJ

456. Robbins, James H., Township of East Amwell, NJ

457. Robbinsville Township Council, NJ

458. Robbio, Beatrice, Family Promise, Summit, NJ

459. Robinson, Kenneth and Phyllis, Cranbury, NJ

460. Rodzinak, Steve, Bridgewater Township, NJ

461. Rogan, Sean, Clinton, NJ

462. Romanzo, Michael J., The Valley Hospital, NJ

463. Ronzo, Judy, Raritan Valley Habitat for Humanity, Bridgewater, NJ

464. Rooney, Pam, CHCC, Hawthorne, NJ

465. Rose, Neda, Edgewater Borough Council, NJ

466. Roseberry, C. Richard, on behalf of Green Brook Township, NJ

467. Roth, Michelle B., Mayor, Township of Manalapan, NJ

468. Rougas, Paul and Judy, Cranbury, NJ

469. Rozanski, Mordechai, Rider University, Lawrenceville, NJ

470. Rush, Dinah, Knowlton Township, NJ

471. Russo, John F., Russo and Cassidy, LLC, Toms River, NJ

472. Rustin, Peter, Mayor, Borough of Tenafly, NJ

473. Ryan, Elizabeth A., NJ Hospital Association, Princeton, NJ

474. Sachau, Barbara, Florham Park, NJ

475. Safire, Susan, Habitat for Humanity of Bergen County, Hackensack, NJ

476. Samms, Caswell L., East Orange General Hospital, East Orange, NJ

477. Sandom, Vanessa, Mayor, Hopewell Township, NJ

478. Sands, Susan L., Bedminster, NJ

479. Sansone, Laura, Genesis Health Care Center, Mendham, NJ

480. Sartorio, Philip, Township of Hamilton, NJ

481. Satten, Jeff, Genesis Health Care Center, Matawan, NJ

482. Scalo, Philip, Bartley Healthcare, Jackson, NJ

483. Scapellato, Peter, Mayor, Township of Franklin, NJ

484. Scapicchio, David M., Mayor, Township of Mount Olive, NJ

485. Schneiderman, Gary S., Mayor, Livingston Township, NJ

486. Schoor, Barbara K., Community Investment Strategies, Inc., Bordentown, NJ

487. Schopperth, Ron and Sue, Newton, NJ

488. Schuurman, Henry, CHCC, Hawthorne, NJ

489. Schwarz, Lynne, Cranbury, NJ

490. Sekelsky, Edward, Cranbury, NJ

491. Shapella, Ron, Deputy Mayor, West Amwell Township, NJ

492. Simpkins, F. Lyman, Mayor, Pemberton Borough, NJ

493. Sistek, Jane, Kennedy Health, Sewell, NJ

494. Slachetka, Stan, on behalf of the Borough of Rumson, NJ

495. Slaugh, Brian M., on behalf of Berlin Borough, NJ

496. Slaugh, Brian M., on behalf of Lumberton Township, NJ

497. Slaugh, Brian M., on behalf of Moorestown Township, NJ

498. Sloan, Lance, Paterson, NJ

499. Smith, Audrey W., Cranbury, NJ

500. Smith, Dale B., Cranbury, NJ

501. Smith, Phyllis, Cranbury, NJ

502. Smith, Sidney R., The Valley Hospital, NJ

503. Smithers, Cynthia, Cranbury, NJ

504. Snyder, William, Secausus Affordable Housing Board, Secaucus, NJ

505. Sodora, Charlotte, Care One, NJ

506. Solow, Lee, Regional Planning Board of Princeton, Princeton, NJ

507. Somers, Julia M., NJ Highlands Coalition, Boonton, NJ

508. Somerset County Planning Board, Somerville, NJ

509. Somerville Borough Planning Board, NJ

510. Sorrentino, Barbara, DePaul Health, Sewell, NJ

511. Spann, Evelyn, Cranbury, NJ

512. Spector, Craig D., Peckar and Abramson, River Edge, NJ

513. Stack, Brian, Mayor, Union City, NJ

514. Stagg, Kevin, CHCC, Wyckoff, NJ

515. Staples, Francis, Cranbury, NJ

516. Staum, Steve, Care One at Teaneck, Teaneck, NJ

517. Steenland, H.C. "Pete", Carneys Point, NJ

518. Stefanowicz, Alan, Cranbury, NJ

519. Stehn, Michael P. and Phylissanne, Cranbury, NJ

520. Stein, Gary S., Pashman Stein, Hackensack, NJ

521. Stevens, Linda, Avon by the Sea, NJ

522. Stevenson, George, on behalf of Willingboro Township, NJ

523. Stillinger, Dorothea K., Chatham Township Environmental Commission, NJ

524. Stroke, Ilana, Cranbury, NJ

525. Struyk, Douglas, CHCC, Wyckoff, NJ

526. Stryker, Jim, Franklin Township Planning Board, NJ

527. Surenian, Jeffrey, Jeffrey R. Surenian and Associates, Brielle, NJ

528. Surenian, Jeffrey R., on behalf of Middletown Township, NJ

529. Sutphen, Paul H., Frankford Township, NJ

530. Swann, Eileen, New Jersey Highlands Council, Chester, NJ

531. Szabo, David and Pam, Cranbury, NJ

532. Szabo, John P., Township of Wayne, NJ

533. Tarshis, Steven M., Mayor, Township of Franklin, NJ

534. Taylor, James M., Cranbury, NJ

535. Tenafly Borough Planning Board, NJ

536. Territo, Joseph and Dorothy, Cranbury, NJ

537. Tessing, Elizabeth, Kennedy Health, Mantua, NJ

538. Testa, Janice, Brick, NJ

539. Thomas, T. Andrew, on behalf of Farmingdale Borough, NJ

540. Thomas, Thomas A., on behalf of Freehold Township, NJ

541. Thoms, John, Mayor, Borough of New Providence, NJ

542. Thomson, Michael and Grace, Cranbury, NJ

543. Tiedemann, Glenn H., Wharton, NJ

544. Tittel, Jeff, Sierra Club, NJ Chapter, Trenton, NJ

545. Tomasko, Paul H., Mayor, Borough of Alpine, NJ

546. Tomson, Douglas M., NJ Association of Realtors, Edison, NJ

547. Toon, Darice, Jersey City Div. of Community Development, NJ

548. Topolewski, Richard, Kennedy Health, Sewell, NJ

549. Torsilieri, Carl J., Mayor, Borough of Far Hills, NJ

550. Town of Harrison, NJ

551. Town of Newton, NJ

552. Township of Colts Neck, NJ

553. Township of Robbinsville, NJ

554. Township of Roxbury, NJ

555. Township of Springfield, NJ

556. Troast, David R., Township of Sparta, NJ

557. Trunfio, Joseph A., Atlantic Health, Morristown, NJ

558. Truscott, Martin P., on behalf of Neptune Township, NJ

559. Tu, Christine, Cranbury, NJ

560. Two Rivers Council of Mayors, NJ

561. Union Township Committee (Hunterdon County), NJ

562. Uphold, Sandra, Bartley Healthcare, Jackson, NJ

563. Valente, Charles, Cranbury, NJ

564. Van Den Kooy, Peter, on behalf of Oceanport Borough, NJ

565. Van Den Kooy, Peter, on behalf of Oldmans Township, NJ

566. Van Den Kooy, Peter, on behalf of the Borough of Beachwood, NJ

567. Van Den Kooy, Peter, on behalf of the Borough of Spring Lake Heights, NJ

568. Vanek, Annette, Cranbury, NJ

569. Vas, Joseph, Mayor, City of Perth Amboy, NJ

570. Velez, Jeanie, Little Egg Harbor, NJ

571. Venanzi, Kirstie and Paul, Cranbury, NJ

572. Vivian-Granville, Charlene, Cranbury, NJ

573. Vlecides, Constantine, Buckingham Palace, Princeton, NJ

574. Voros, Peter I., Mayor, Township of Pittsgrove, NJ

575. Voyce, William, Mayor, Township of Tewksbury, NJ

576. Wagner, William D. and Betty, Cranbury, NJ

577. Wahlers, Dietrich, Cranbury, NJ

578. Wallace, James C., Lourdes Health System, NJ

579. Wallace, Paul, Hackettstown Town Council, NJ

580. Walsh, Kevin, Fair Share Housing Center, Cherry Hill, NJ

581. Walton, Rob, Mayor, Hampton Borough, NJ

582. Watkins, Matthew U., Township of South Brunswick, NJ

583. Webb-Washington, Lavern, Webb-Washington CDC, NJ

584. Weidner, Thomas P., Cranbury, NJ

585. Weinstein, Howard and J. Sasha, Cranbury, NJ

586. Weitze, Eric, Skillman, NJ

587. Welch, Christopher J. and Renee, Cranbury, NJ

588. Welch, Phil Jr., Monmouth Advocacy Team, Lincroft, NJ

589. Werner, Sister Patrice, Caldwell College, Caldwell, NJ

590. West Windsor Township, NJ

591. Wheeler, Janet, Cranbury, NJ

592. Whitty, Hazel, CHCC, Butler, NJ

593. Wiegand, Jack and Janet, Cranbury, NJ

594. Wills, Linda E., New Jersey Meadowlands Commission, Lyndhurst, NJ

595. Wilson, John B., AICUNJ, Summit, NJ

596. Wilton, Linda, Bridgewater, NJ

597. Xiao, Li, Cranbury, NJ

598. Yaecker, John, Western Monmouth Habitat for Humanity, Freehold, NJ

599. Yang, Lihua, Cranbury, NJ

600. Yannich, Shirley, Warrington, PA

601. Yaxley, Catherine, Holy Name Hospital, Teaneck, NJ

602. Yee, Movien, Cranbury, NJ

603. Yehl, Peter M., Cranbury, NJ

604. Yeomans, Kathryn A., The Valley Hospital, NJ

605. Yesalavage, Carl, Cranbury, NJ

606. Young, Mary Lou, Cranbury, NJ

607. Zappasodi, Anthony J., Woolwich Township, NJ

608. Zimmerman, Edward P., Mayor, Borough of Rocky Hill, NJ

609. Zucaro, Linda, Tinton Falls, NJ

610. Zurfluh, Robert, Cranbury, NJ

611. Dressel, William G., New Jersey State League of Municipalities, Trenton, NJ

612. Coalition for Affordable Housing and the Environment, Trenton, NJ

As explained below, the repeal of N.J.A.C. 5:94 was not adopted. As a result, proposed N.J.A.C. 5:94 is recodified upon adoption as N.J.A.C. 5:97, and references to the new rules below use the recodified citations.

N.J.A.C. 5:97-General

COMMENT: The municipality notes that one-third of its land area is dedicated to United Water of New Jersey conservation and water supply use, for the benefit of the entire northern New Jersey region. This was not taken into consideration in the Rutgers vacant land analysis.

RESPONSE: Many individual municipalities and counties have developed Geographic Information System (GIS) databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by the New Jersey Department of Environmental Protection (NJDEP) or the Office of Smart Growth. The Council on Affordable Housing (COAH) anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this data in the near future.

COMMENT: The area of the proposed rules that is probably most detrimental to the State in general and to Ocean County in particular, involves the non-residential growth share requirements. There are many technical problems with the rules in this regard; however, the overarching problems involve the fact that the rules generally will have a substantial negative effect on New Jersey's ability to remain a viable place for business to locate. If new construction, expansion and/or redevelopment are utilized to provide the space for businesses then the cost to obtain a certificate of occupancy (CO) will be excessive and make locating and/or expanding business in New Jersey coast prohibitive. Further, the amendments to the Fair Housing Act (FHA) that will cap this negative financial impact to the business community will just shift this negative financial impact to the taxpayers in a given municipality. The municipality will accrue an affordable housing obligation as a result of the non-residential growth, but it will not be able to pass that obligation along to the developer, but rather it will have to utilize tax payer resource to some extent to satisfy this non-residential growth share obligation, thereby making their towns that much less affordable to all who reside there and pay property taxes.

RESPONSE: The Council disagrees with the commenter that municipalities participating in the COAH process will be at a competitive disadvantage with other municipalities not participating in COAH's process. COAH provides a number of incentives to participate in its process. The commenter should note that the Council's rules will be amended in the near future to provide additional incentives to developers to provide affordable housing through inclusionary zoning. The commenter should note that the Council has established uniform standards for payments in lieu of construction to ensure certainty and predictability for all parties. The Council also requires municipalities to provide non-residential developers with a compensatory benefit such as increased floor area ratios as an incentive for producing affordable housing. Depending on local economic development goals, municipalities may alternatively exempt non-residential development from an affordable housing requirement and instead charge a flat development fee.

COMMENT: At 40 N.J.R. 240, it is indicated that rather than recalculate second round obligations, COAH is using the second round obligations published for each municipality in the adoption of the second round rules. The statement is not accurate. For example, Vernon Township had a second round obligation of 71 rehabilitation units and 55 new construction, which in the 2004 growth share regulations was reduced to 2 rehabilitation and 44 new construction. The proposed rules assign 31 rehabilitation and 60 new construction.

RESPONSE: Municipalities prior round new construction obligations have remained unchanged from 1993. Vernon Township's 1993 new construction obligation was 60 and is so stated in Appendix C. The rehabilitation obligation has been updated based on the 2000 Census for each municipality in Appendix B.

COMMENT: The commenter believes that regional contribution agreements (RCAs) should only be permitted between municipalities in the same county.

RESPONSE: This change would be inconsistent with the FHA. Pursuant to the FHA, a municipality may propose the transfer of up to 50 percent of its fair share obligation to another municipality within its housing region by means of contractual agreement into which two municipalities voluntarily enter.

COMMENT: Imposing set-asides for affordable housing in urban areas will discourage development in our cities due to the high cost of construction of the mid-rise housing type, and the substantial site remediation expenses which are typically encountered when redeveloping industrial sites. Urban construction costs are, on average, more than four times the cost of stick-framed suburban construction, and, therefore, the losses builders incur for constructing the affordable homes are considerably more substantial. Revenues from affordable homes in these product types are also negatively impacted, as builders need to account for the high monthly maintenance fees, which typically are not permitted to be subsidized by the market homes, when calculating the restricted sales prices.

RESPONSE: The Council recognizes that the economics of construction costs in higher density settings typified in urban markets render the use of density increases, especially when the minimum density is lower than the existing density, less effective in establishing viable economic incentives that will result in an increased supply of affordable rental units. Therefore, some flexibility with regard to set-aside, growth share generation, and affordability requirements in these areas is warranted. The rule will be amended in the near future to permit a 15 percent set-aside for rental developments in urban centers and workforce census tracts, as determined by the U.S. Census Bureau, and to permit an exclusion of the additional market rate rentals in such deveopments from a municipality's actual growth share, as calculated under N.J.A.C. 5:97-2.5. In addition, the Council will consider future rule amendments to address the affordability average of rentals in urban areas.

COMMENT: The commenter also supports a growth share system that is graduated based on location, job creation, and whether the job or housing creation fulfills the goals of smart growth. For example, building an office park in a cornfield in the middle of nowhere creates a bigger demand for new housing in the area and creates more traffic and pollution for people having to travel further. Conversely, building in an existing community near mass transit creates less demand for housing, less pollution from traffic, achieves the goals of smart growth and therefore should result in a lesser affordable housing obligation. To illustrate the relationship of smart growth objectives to affordable housing obligations, the following example calculates a town's housing obligation based on growth in jobs. A graduated formula should be utilized if the growth is mixed-use, served by transit, in a redevelopment area or a brownfield, on an existing sewer line, or consistent with a new State Plan and Policy Map that adequately reflects water supply and natural resource constraints. Starting with a base of one housing unit for every five jobs and giving five points for each factor, if jobs were created in a mixed-use development, on a brownfield, in a distressed community, next to a light rail system, with existing sewers, for example, this growth development would receive 25 points which translates into a requirement to provide one housing unit per 30 jobs created. In other words, if Merrill Lynch developed a farm field in the middle of nowhere, it would create a need for one housing unit for every five jobs, but if that same project went into Ewing on the former GM site next to the West Trenton train station, it would generate one housing unit per every 15 jobs. Another example to calculate a town's affordable housing obligation based on whether new housing developments successfully achieve Smart Growth objectives uses a graduated formula that factors in the price of the housing and whether the project qualifies as smart growth. The Sierra Club proposes a formula starting with a base of one unit of affordable housing per 20 units built and adding two points for every factor of the project that contradicts smart growth - so if the project is outside a smart growth area, not available to the general public, not serviced by transit, over $ 1 million dollars per unit, not served by existing sewers or existing public water lines, not served by existing public water, and on environmentally sensitive lands, such as steep slopes or protected waterbodies, then points would be added for each of these factors. For example, a project in the Highlands on septics, in the Highlands, on steep slopes, not near any transit, selling for $ 700,000 per unit, would generate a 30 percent affordable housing obligation. Percentage points could be deducted if the project is mixed-use, in a distressed community, in a transit village, or otherwise fulfills the goals of Smart Growth.

RESPONSE: The Council's methodology meets the requirements of the FHA and the *Mount Laurel* decisions to develop a methodology that meets the State and regional need for affordable housing. However, the Council concurs with the commenter that incentives should be provided to build affordable housing in smart growth areas. The rule will be amended in the near future to create incentives to build affordable housing in redevelopment areas and in smart growth areas near transit.

COMMENT: In the consultant's report Task 1 - Allocating Growth to Municipalities, page 43, the number of housing units are provided for the municipalities in Warren County. The figures for Hackettstown and Mansfield use the 2000 Census as the basis. The census figures for Hackettstown and Mansfield were incorrect and the population for both municipalities was corrected. The housing unit numbers were not officially corrected by the U.S. Census Bureau. The Warren County Planning Department estimated that in the year 2000, the number of housing units in Hackettstown should have been 3,506 and in Mansfield should have been 3,256. The commenter suggests revising the projected housing unit count based on the revised estimates.

RESPONSE: The Council learned that the Census made an error regarding the boundary between the two jurisdictions, and had assigned units and population to Hackettstown that should have been assigned to Mansfield. The Census also acknowledged the error, and sent a correction letter to the Warren County Planning Department. It is appropriate to correct these numbers because they represent known, corrected issues with the source data. Correcting does not introduce methodological inconsistencies, as the Council's consultants are not substituting local data for uncontested Census data. Rather, they are substituting a locally produced estimate of what the Census would have said had it been correct in the first place. The methodology will be updated in the near future and will incorporate these corrections for Hackettstown and Mansfield.

COMMENT: The proposed modifications to the COAH Rules are contrary to the *Mount Laurel II* court decision, which requires affordable housing polices to conform to the State Plan.

RESPONSE: COAH's rules comply with the language and intent of the *Mount Laurel II* decision. The *Mount Laurel II* decision (*Southern Burlington County NAACP v. Mt. Laurel*, 92 *N.J.* 238 (1983)) states that all New Jersey municipalities have a constitutional obligation to provide realistic opportunities for affordable housing. COAH's rules promote compliance with the State Development and Redevelopment Plan that lands in Planning Areas (PAs) 1 and 2 as well designated centers are the most suitable areas for higher density development. The Council intends to continue working cooperatively with other State agencies and to provide clear direction to municipalities on affordable housing policy goals. The Council currently has memoranda of understanding with the State Planning Commission, the Pinelands, the Meadowlands, and the NJ Department of Environmental Protection, all of which the Council intends to update and expand. In addition, the Council intends to enter into an memorandum of understanding (MOU) with the Highlands Council in the near future. In accordance with the site suitability provisions at N.J.A.C. 5:97-3.13, the Council reviews all sites designated to produce affordable housing for consistency with the State Development and Redevelopment Plan (SDRP). The Council also encourages center-based development and other forms of compact development. In keeping with smart growth objectives, the rules will be amended in the near future to provide bonuses for affordable housing within transit oriented developments and redevelopment areas. The commenter should note that the Third Round Memorandum of Understanding between COAH and the State Planning Commission which was adopted July 13, 2004, contains the interagency agreement that: "All planning areas can accommodate growth and therefore can accommodate a commensurate affordable housing obligation in a manner consistent with the goals, objectives, and policies of the State Plan." This is a realistic recognition that growth occurs throughout New Jersey, in all planning areas. The *Mount Laurel* decisions and the FHA make clear that every municipality has a constitutional obligation to provide for its fair share of the regional need for affordable housing. While COAH prefers affordable housing developments to be located in PA 1, 2 or centers, COAH does not believe it would be appropriate to eliminate all lands outside of these areas from an analysis of vacant, developable land or and affordable housing obligation, particularly as the State agencies, such as DEP, that regulate use of the land would permit development on these lands. Additionally, the FHA does not mandate the use of the SDRP. N.J.S.A. 52:27D-307e states "In carrying out the above duties, including, but not limited to, present and prospective need estimations, the Council shall give appropriate weight

to pertinent research studies, government reports, decisions of other branches of government, implementation of the State Development and Redevelopment Plan prepared pursuant to sections 1 through 12 of P.L. 1985, c.398 (C. 52: 18A-196 et seq.)."

COMMENT: The Economic Impact statement does not address the economic impact of the costs being placed upon the municipalities of New Jersey and their taxpayers. The Economic Impact statement does not include any cost revenue analysis as to how the subsidy costs generated by the rules can be offset by the increased fees proposed. The rules double the new construction obligation to 115,666 affordable units to New Jersey municipalities. If the subsidy needed Statewide for an affordable unit averages $ 161,000 as suggested by the rules, then the total subsidy required by 2018 is $ 18,622,226,000. This is contrary to the Fair Housing Act, which states that "nothing shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing." COAH should evaluate the economic sustainability of adopting rules which attempt to require approximately 31 percent of all new residential units constructed in New Jersey during the third round to be restricted to households with low or moderate income.

RESPONSE: The Council appreciates the commenter's concerns and observations. The Council does not believe its methodology will negatively affect New Jersey's economic growth though it does recognize that any additional growth can impact a community. However, under the provisions of the Fair Housing Act (FHA) and various Court decisions reviewing the FHA as well as other affordable housing issues, COAH is required to develop the rules to implement a program for the allocation of low and moderate income housing. The Council has proposed a system which it believes will require every municipality to meet is fair share of regional housing need. The Growth Share methodology will not disproportionately burden any one municipality. This approach links affordable housing obligation to the development of market-rate housing units or the creation of new jobs. In this way, all municipalities will be responsible for creating the same share (relative to growth) of affordable housing. COAH's methodology consists of three components- prior round, rehabilitation share and growth share- these municipalities, if urban aid, had no prior round obligation, rehabilitation share represents present need and the rules have been amended to provide an option to a municipality to adjust its rehabilitation share, and growth share is based on new jobs and housing projections for 2004 to 2018. In addition, municipalities have available a myriad of options for meeting their affordable housing obligations, of which inclusionary development is only one option. These options are described in N.J.A.C. 5:97-6. For instance, municipalities may undertake a municipally-sponsored construction project or an accessory apartment program. The Council's rules have always allowed municipalities to receive credit for existing affordable housing in accordance with its rules. The rules will be amended in the near future to permit a 15 percent set-aside for rental developments in workforce housing census tracts, as determined by the U.S. Census Bureau, and to permit an exclusion of the additional market rate rentals in such developments from a municipality's actual growth share, as calculated under N.J.A.C. 5:97-2.5. In addition, the Council will consider future rule amendments to address the affordability average of rentals in urban areas. The Council will also be working on the following issues: amending its rules in the near future to provide a Smart Growth bonus for affordable units created in PA 1, 2 or Designated Centers as part of a Transit Oriented Development; and amending its rules in the near future to provide a redevelopment bonus. Also, there is a pending bill in the Assembly, A500 that would eliminate payment in lieu for non-residential sector and instead impose a Statewide development fee which will help with commercial development in all areas of the State. Lastly, to provide a sense of COAH's thoughts on dealing with urban issues, the Council points out that the Court has noted, "Reallocating present need from inner cities to other municipalities is fundamentally inconsistent with a constitutional growth share methodology; it suggests that the excess need in inner cities must be specifically reassigned to other municipalities. . .". 390 *NJ Super.* At 60. The Council disagrees with this statement and believes that eliminating reallocated present need unfairly burdens inner cities. If most of the new jobs and new housing in the State do not occur in distressed inner cities, then affirmatively marketing the housing that does become available in suburban growth areas will not require cities to tax their limited sources by providing affordable housing. If, on the other hand, job growth and new housing development does take place in the inner cities, then those municipalities will have greater resources to meet the housing needs of the poor. COAH is obliged to follow the Court's decision.

COMMENT: While hundreds of municipalities have completely thumbed their nose at the COAH process, many

towns have actively pursued affordable housing solutions and met and exceeded their COAH obligations. Some towns have been aggressively providing rental housing, and meeting regional needs that others have left unmet. Others attempting to meet the obligation may have fallen short, but have evidenced their intent to comply with the legislative mandate. If these municipalities are not rewarded with some acknowledgement of their performance to date, they may be well advised to consider whether another venue for resolving their affordable housing obligation will offer more respect for their good efforts. The Social Impact statement does not address the disproportionate impact of the voluntary COAH process on the State's municipalities. Indeed, the obligation and the cost of compliance with the Affordable Housing program on those municipalities that enter into the COAH process to comply with their affordable housing obligation is significant and burdensome. The municipalities that have not participated in the process have avoided the significant cost and obligation to plan and provide for their fair share. It is fundamentally unfair and inconsistent with the intention and purpose of the Mt. Laurel Doctrine for the proposed Third Round Rules to ignore the municipalities that have chosen not to comply and participate in the process. Conversely, the proposed Third Round Rules fail to reward those municipalities (such as Manalapan) that have engaged in and complied with the process.

RESPONSE: The commenter should note that the FHA and the proposed rules create a voluntary process. Municipalities that choose to participate in the Council's process are required to provide a realistic opportunity to meet the required affordable housing resulting from the growth share projections. The Council's rules clearly provide an incentive for municipalities to comply by providing them protection from exclusionary zoning lawsuits. The proposed rules provide flexibility and a variety of options to enable municipalities to meet their constitutional affordable housing obligations, which the Council believes creates an incentive for municipalities to participate in its process. The Council will amend its rules in the near future to provide a compliance bonus for affordable housing built on-site and included in a development that received preliminary or final subdivision or site plan approval, or was the subject of an executed redevelopment agreement, between December 20, 2004 and June 2, 2008.

COMMENT: The proposed rules are the antithesis of smart growth. The future development of affordable housing is based on a trend analysis of growth. Any rules basing the provision of affordable housing through growth will contribute to the current trend of sprawling development in New Jersey. The recent and current growth, in the form of sprawl, occurred in a manner that is not consistent with State goals, and, therefore, should not be reinforced by State requirements. The rules do not consider recently imposed restrictions on development in the Highlands or DEP restrictions around the State. The allocations are not based on the presence of water and sewer. In fact, COAH has done no analysis of sewer and water capacity.

RESPONSE: Historical trends have been used only to establish a benchmark growth rate. These growth rates have been applied to a detailed analysis of remaining unconstrained vacant land within each municipality thus resulting potentially in densities that are higher than what has been reflected in historical trends. By projecting growth based on historical trends and allocating that growth at higher densities, compact forms of development and efficient uses of land are promoted. Allocation densities have been determined based on the location of unconstrained developable land by planning area and sewer service area. Recent revisions to the DEP Flood Hazard rules have been incorporated into the allocation model as have its constraints identified by the Highlands Council. The Council will evaluate the Highlands Regional Master Plan after it has been finalized. Where sewer service areas exist or are proposed, infrastructure capacity must be analyzed as part of the municipal planning process whereby appropriate affordable housing sites and/or zones are proposed. The Council will amend the rules in the near future to expand the applicability of the durational adjustment provisions of N.J.A.C. 5:97-5.4 to encompass the growth share obligation when it can be demonstrated that infrastructure capacities are limited.

COMMENT: The New Jersey Department of Agriculture (NJDA) supports the New Jersey Council on Affordable Housing's decision to exclude preserved farmland from the analysis of available vacant land. However, the commenter would like to emphasize that agriculture is a land-based industry. In order to protect the industry, the State Agriculture Development Committee has earmarked the majority of their financial resources for counties and municipalities that plan for the continuation of agriculture and target land for preservation. Fifteen counties and 37 municipalities have completed comprehensive plans which designate areas for the preservation of the agricultural industry and include a

Farmland Preservation Element as part of their municipal master plan. The NJDA believes the areas targeted for agricultural retention should be excluded from the vacant land analysis.

RESPONSE: The Council's vacant land analysis excluded preserved farmland from the inventory of vacant land based upon the latest data from the N.J. Department of Agriculture. While areas targeted for future agricultural retention were not excluded from the vacant land analysis, a municipality seeking a vacant land adjustment may remove agricultural lands from its vacant land inventory when the development rights to these lands have been purchased or restricted by covenant. The municipality may remove an additional three percent of land for active recreation and three percent for passive recreation provided the site(s) are purchased and limited to active or passive recreational within one year of substantive certification.

COMMENT: The new jobs-to-affordable housing ratios are both unrealistic and punitive. The new rules not only reduce the triggering threshold for an affordable unit from 25 jobs to 16, the number of jobs projected for practically every industry use group has been increased. COAH's third round rules assign 40 percent of the fair share obligation - or 46,226 units - to non-residential development. At an average subsidy cost of $ 161,004 per unit, this represents a subsidy requirement of $ 7.4 billion, which is far in excess of the level of funding which non-residential developers can sustain - even with compensatory zoning initiatives. Those non-residential developers who are not place-based, that is, their development is not tied to a particular locale or market, may choose to move to a neighboring state where development costs are lower. Those non-residential developers who are place-based may choose to develop at a smaller scale. In both cases, tax revenue is lost by the municipality, county and State and the amount of projected growth will not produce the amount of projected affordable housing units. The cost of supplying these 46,226 units affordable units will fall to municipalities since residential developers will be unable to meet the 60 percent fair share obligation - or 46,226 units - assigned to them. COAH's figures overestimate the market rate residential units capable of supporting affordable housing delivery.

RESPONSE: Pursuant to the Court's decision, COAH determined the new jobs and housing rations on updated information and data sets. The Council does not believe its methodology will negatively affect New Jersey's economic growth. In addition, the Council is considering the following: The Council will amend its rules in the near future to provide a Smart Growth bonus for affordable units created in PA 1, 2 or Designated Centers as part of a Transit Oriented Development. The Council will amend its rules in the near future to provide a redevelopment bonus for affordable housing located in redevelopment areas. Municipalities have the flexibility to use a variety of mechanisms; and can choose based on economic goals to assess a developer a payment in lieu. The FHA determined that each municipality has an obligation to address its region's fair share obligation. The Council is responsible for determining each municipality's obligation using a growth share approach, based on municipal housing and job growth. The Council has established standardized payment in lieu to create predictability. Also, there is a pending bill in the Assembly, A500, that would eliminate payment in lieu for non-residential sector and instead impose a statewide development fee.

COMMENT: The commenter is concerned that these rules do not seem to address another more typical and pressing problem: charging farmers some form of fees when they attempt "agricultural development" such as barns, storage buildings, greenhouses, equine facilities, and processing or packaging facilities. These usually do not generate jobs, so municipalities have been using alternate methods such as square footage to calculate affordable housing fees. Since even one new housing unit costs well over $ 200,000 around New Jersey, towns have been charging these farmers more than the buildings are worth in many cases. The commenter had hoped that these rules would at least require towns to use their authority to waive or greatly reduce their exactions for what are clearly agriculturally related structures and that COAH would use its power to approve municipal ordinances to ensure that this is done.

RESPONSE: Appendix D of the proposed rules displays a chart to be used to project and implement the non-residential component of growth share. The agricultural buildings that the commenter is referring to appear to be categorized as Use Group U and, as a result of this categorization, are excluded from the non-residential projection. However, municipalies are not prohibited from including or excluding Use Group U buildings from the local development fee ordinance. See N.J.A.C. 5:97-8.3, Development fee ordinances.

COMMENT: Affordable housing needs the proper "affordable housing infrastructure" to be successful. It makes no sense to make local rules for a statewide problem. The rules should make the obligations regional so that affordable housing can be located in the areas where it will be most effective. It makes no sense to provide affordable housing in neighborhoods where there are few if any jobs and where every adult needs a car in order to survive.

RESPONSE: Providing affordable housing has been an ongoing constitutional obligation since the *Mount Laurel* decisions and the enactment of the FHA of 1985. Affordable housing obligation figures have been generated by the Council, pursuant to the FHA, for the periods 1987 to 1993, 1993 to 1999 and 1999 to 2018. The FHA requires each municipality to address its fair share of the regional affordable housing need. The proposed rules require that a municipality provide affordable housing in proportion to non-residential construction generated within the municipality, thereby creating affordable housing near job growth.

COMMENT: Under the proposal, municipalities are being required to plan for affordable housing based upon growth which is unlikely to occur. The approach by the consultants is flawed in many respects. They viewed only a very narrow window of development that occurred prior to Highlands legislation, Wastewater Management Regulations, and other regulatory provisions, and then made faulty assumptions about continued growth from 2002 through 2018.

RESPONSE: Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, the Council's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The consultants are further updating this data to incorporate the estimated impacts of pending DEP Water Quality Management/Wastewater Management Plan Rule changes, using the same methodology as being employed to revise development capacity estimates across the rest of the State. These lower development capacity estimates will be used by the Council's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole.

COMMENT: The projections rely on regulations from DEP that by the time these rules are adopted may be outdated. DEP has proposed a wider range in the new regulations on sewers and Category C1 streams and wastewater management that will make a lot of sites undevelopable, and yet the projections rely on a lot of those sites in saying it's possible to meet the needs for growth share.

RESPONSE: The Council's consultants have been working with NJDEP to incorporate additional information with regard to increasing the size of certain stream buffers and refining where development may be permitted within floodplain areas, both of which are regulated by the recently adopted Flood Hazard Control Act. In addition, they are updating the vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rule changes. DEP is currently reviewing its proposed changes to C-1 stream classifications, and could not make any updated spatial data available with regard to potential impacts.

COMMENT: The commenter entered into a developer's agreement after the Appellate Division invalidated the existing regulations to put in an inclusionary development that had a combination of family rental units and RCAs. Before entering into that agreement, we had meetings with COAH and were assured that municipalities should proceed with good projects that actually create affordable housing, and we did so. We've done some preliminary calculations and it now looks like our growth share obligation arising out of that inclusionary development is going to double. The commenter feels very strongly that we should have been able to rely on COAH's assurances to proceed with good projects.

RESPONSE: The rules will be amended at a future date to provide for a bonus for affordable units that received municipal approvals (preliminary or final approvals) or were included in a redeveloper's agreement between December 20, 2004 and June 2, 2008. The units had to have been proposed to address a municipality's growth share obligation in a third round Housing Element and Fair Share Plan that was included in a municipal petition for third round substantive certification between December 20, 2004 and January 25, 2007.

COMMENT: How can a small town that is built out, has an apartment moratorium, and is on the National Register and the State Register of Historic Towns address its COAH obligation? The regulations permit a density bonus for developers who provide on-site construction. However, this option is of limited use within the township given current sewer, septic system and school capacity limitations. There doesn't seem to be anything in the new rules that fits small towns like us.

RESPONSE: There are a number of compliance mechanisms that a municipality can utilize to address its affordable housing obligation, some of which do not necessarily require the availability of vacant land or result in a negative impact on rural or historic character. These include a market to affordable program, supportive and special needs housing, an accessory apartment program, regional contribution agreements, an affordable housing partnership program, and extension of expiring controls. In addition, bonuses for rental units and very low-income housing are also available. Other innovative approaches meeting the Council's basic requirements for the provision of affordable housing will also be considered by the Council.

COMMENT: The retroactive obligation being imposed by the proposed regulations is even more insidious to the taxpayers. Many municipalities adopted growth share ordinances under the 2004 regulations. The proposed regulations reward those efforts by assigning an even higher affordable housing obligation based on those developments, with no means to recapture the obligation. A retroactive growth share obligation, more aggressive than the earlier regulations, is to be imposed back to 2004. There is no funding mechanism provided for the large retroactive obligations now being imposed.

RESPONSE: The rules will be amended in the near future to provide a two for one compliance bonus for municipalities that approved affordable housing units between December 20, 2004 and June 2, 2008, provided the units were included in a third round fair share plan submitted to the Council prior to January 25, 2007.

COMMENT: Economic development will be negatively impacted by these aggressive growth share ratios. Developers will struggle to satisfy the growth share ratios in prospective development, whether it be satisfied by actual construction or the payment in lieu. The payment in lieu alone will add over $ 25.00 per square foot to the cost of office construction. These added costs and obligations are sure to have an impact on attracting quality development.

RESPONSE: The Council does not believe its methodology will negatively affect New Jersey's economic growth. In addition, the Council is considering the following: -- The Council will amend its rules in the near future to provide a Smart Growth bonus for affordable units created in PA 1, 2 or Designated Centers as part of a Transit Oriented Development. -- The Council will amend its rules in the near future to provide a redevelopment bonus for affordable housing located in redevelopment areas. -- Municipalities have the flexibility to use a variety of mechanisms; and can choose based on economic goals to assess a developer a payment in lieu. -- FHA determined that each municipality has an obligation to address its region's fair share obligation. The Council is responsible for determining each municipality's obligation using a growth share approach, based on municipal housing and job growth. -- The Council has established standardized payment in lieu to create predictability. -- Also, there is a pending bill in the Assembly, A500, that would eliminate payment in lieu for non-residential sector and instead impose a Statewide development fee.

COMMENT: Our municipality, a small rural township, strongly objects to the proposed COAH rules. The ratio of one affordable unit to four market rate units is much too high and will put a severe financial strain on many municipalities and will result in a huge burden to the tax payers. Municipalities have only limited control over the growth that occurs within their boundaries. Not only does residential growth increase the burden on our schools, but now, under these proposed rules, a significant burden to provide a high number of affordable units is added. The excessive nature of the proposed rules almost guarantees that a builder's remedy will be the only way to satisfy the COAH mandate. Small rural towns like ours will not have the funds to meet their COAH obligations on their own. COAH should require a regional obligation, not a town-by-town obligation, and rules should emphasize the importance of redevelopment over development. It has taken New Jersey over 250 years to fall behind in the provision of affordable housing, and it may take more than the next 10 years to catch up. A less ambitious set of "growth share" ratios would

make it more attractive for municipalities to consider additional density increases in exchange for higher affordable housing set-aside rates, which would allow towns to catch up over time with any backlog in the prior round obligation and still stay abreast of the growth share obligation. To adopt the proposed rules, which seek to satisfy the 115,566 unit need, will hamper economic development by slowing residential and non-residential growth. It is disingenuous to suggest that limited State funds available for affordable housing will prevent the burden from being shifted to the tax payers.

RESPONSE: The Council does not believe its methodology will negatively affect New Jersey's economic growth. In addition, the Council is considering the following: -- The Council will amend its rules in the near future to provide a Smart Growth bonus for affordable units created in PA 1, 2 or Designated Centers as part of a Transit Oriented Development. -- The Council will amend its rules in the near future to provide a redevelopment bonus for affordable housing located in redevelopment areas. -- Municipalities have the flexibility to use a variety of mechanisms; and can choose based on economic goals to assess a developer a payment in lieu. -- FHA determined that each municipality has an obligation to address its region's fair share obligation. The Council is responsible for determining each municipality's obligation using a growth share approach, based on municipal housing and job growth. -- The Council has established standardized payment in lieu to create predictability. -- Also, there is a pending bill in the Assembly, A500, that would eliminate payment in lieu for non-residential sector and instead impose a statewide development fee.

COMMENT: Most of our schools are primarily financed through municipal property taxes. As a result of this, most municipal governments try to find ways to limit the number of families with children in their communities. Wealthy towns with small numbers of school children tend to have low tax rates; poorer towns with more school children have higher tax rates. Other states have found ways to deal with this problem. Vermont has a statewide property tax to finance their schools. This basically taxes all of the properties in the state at the same rate so that people in the towns with more school children don't have to take pay higher tax rates. This goes a long way toward stopping the competition among municipalities to send families with school children elsewhere. All of our politicians are now afraid to raise taxes, even when this is necessary. School taxes are just one example of why towns compete with each other to avoid having low-income people (especially those with children). They also compete to have wealthier people without children. Most towns prefer to have high-priced housing and age-restricted housing to having affordable housing. This has become a disaster for low- and very low-income people. Nobody wants them. What we have here is a state government in which bad tax policy drives bad housing policy. We need very low-, low- and moderate-income people in our society. More than this, we have an obligation to treat them fairly. Making bad housing policy as a way of coping with bad tax policy is not only irrational, it is profoundly immoral.

RESPONSE: This comment is outside the scope of the Council's jurisdiction.

COMMENT: COAH was created to remedy the problem of exclusionary zoning in the suburbs. COAH's institutional framework is primarily oriented toward compliance monitoring in the suburbs and it is not geared toward understanding the distinct daily challenges faced by the urban centers. In particular, COAH has not considered the struggle that urban centers throughout the State often face on a daily basis in attracting private sector investment in market rate housing that helps to revitalize depressed and crime ridden areas, and in commercial properties that creates job opportunities in close proximity to the people who need them the most. COAH has also not considered that areas where current residents are already at low and moderate income levels or in poverty already provide their fair share of affordable housing. COAH has also not considered the artificially increased cost of housing development in urban areas due to aging infrastructure, underground storage tanks, soil contamination. COAH has not considered the high cost of development caused by land scarcity and the resulting higher land acquisition costs. Specifically, COAH should exempt municipalities from obligation from non-residential growth and reduce the obligation for residential growth that occurs: (1) in census tracts that are workforce housing; (2) in census tracts that are high crime; (3) in census tracts where median household income is below 80 percent of COAH regional median income; and (4) in urban municipalities where housing development costs are increased do to the existence of aging infrastructure, underground storage tanks, soil contamination, or high land costs caused by scarcity of vacant land.

RESPONSE: The Council appreciates the commenter's information on the urban perspective. Affordable housing development must always occur within the broader context of a municipality's previously created affordable housing stock and the location of new growth. The Council is proposing new rules to address the commenter's concerns. Specifically, the Council will propose a new section that addresses the unique needs of an Urban Aid municipality and the necessity to bring economic growth to its community. To provide a sense of COAH's thoughts on dealing with urban issues, the Council points out that the Court has noted, "Reallocating present need from inner cities to other municipalities is fundamentally inconsistent with a constitutional growth share methodology; it suggests that the excess need in inner cities must be specifically reassigned to other municipalities. . .". 390 *NJ Super.* at 60. The Council disagrees with this statement and believes that eliminating reallocated present need unfairly burdens inner cities. If most of the new jobs and new housing in the State do not occur in distressed inner cities, then affirmatively marketing the housing that does become available in suburban growth areas will not require cities to tax their limited sources by providing affordable housing. If, on the other hand, job growth and new housing development does take place in the inner cities, then those municipalities will have greater resources to meet the housing needs of the poor. COAH is obliged to follow the Court's decision. The Growth Share methodology will not disproportionately burden any one municipality. This approach links affordable housing obligation to the development of market-rate housing units or the creation of new jobs. In this way, all municipalities will be responsible for creating affordable housing only in relation to their growth. With COAH's Third Round approach, new affordable housing will only be happening in conjunction with new market housing and new jobs which will have a positive impact on local economic development. COAH's methodology consists of three components- prior round, rehabilitation share and growth share. These municipalities, if urban aid, have no prior round obligation (which most suburban communities have). The rehabilitation share represents present need and recognizing that urban area have greater rehabilitation obligations, the rules have been amended to provide an option to a municipality to adjust its rehabilitation share. Growth share is based on new jobs and housing projections for 2004 to 2018. Municipalities have available a myriad of options for meeting their affordable housing obligations, of which inclusionary development is only one option, which can be used while putting a minimal impact the city budgets. These options are described in N.J.A.C. 5:97-6. In addition, the Council's rules have always allowed municipalities to receive credit for existing affordable housing in accordance with its rules. Based on the economic goals of the community, legislation may be adopted to assess a developer a payment in lieu of providing the actual units, thereby providing funds for the city to use as it sees fit to address housing needs. Also, the rule will be amended in the near future to permit a 15 percent set-aside for rental developments in high poverty census tracts, as determined by the U.S. Census Bureau, and to permit an exclusion of the additional market rate rentals in such developments from a municipality's actual growth share, as calculated under N.J.A.C. 5:97-2.5. The Council will consider other future rule amendments to address the affordability average of rentals in urban areas. The Council will also consider the following: amending its rules in the near future to provide a Smart Growth bonus for affordable units created in PA 1, 2 or Designated Centers as part of a Transit Oriented Development; amending its rules in the near future to provide a redevelopment bonus; also, there is a pending bill in the Assemble, A500, which would eliminate payment in lieu for non-residential sector and instead impose a Statewide development fee.

COMMENT: The units that have been built under COAH's process have rooms that are too small. We need to be a little more generous in allowing space in rooms for affordable housing.

RESPONSE: A municipality, through its municipal ordinances, is not prohibited from adopting the recommendations of the commenter.

COMMENT: To allow affordable units at any time period to become non affordable is negative for the population of New Jersey. If it was built as an affordable unit, it should remain as one for its entire term standing. The need is too great to allow the unit to become a profit based unit.

RESPONSE: Proposed N.J.A.C. 5:97-4.3(a)3 notes that COAH-eligible affordable units constructed between October 1, 2001 and December 20, 2004 are required to have affordability controls of not less than 30 years except in State aid municipalities where the requirement may be not less than 10 years. The proposed regulation allows the 10-year restriction only in a workforce housing Census tract. Both regulations make it clear that the affordable

restriction may be removed by the municipality only by positive action of the governing body and a plan to replace the lost units. The Council believes that such flexibility is necessary in low poverty census tracts as the nature and best use of an area may change over time and the municipality must be allowed to meet the changing needs of the whole community while also meeting its affordable housing obligation. In higher poverty areas, affordable housing often provides the catalysis for neighborhood change. The Council believes that it should not stand as a long term impediment to municipal improvement. In units created before October, 2001, the Affordable Housing Agreement provides many government agencies and nonprofits with several mechanisms to preserve affordable housing and the Council provides incentives to initiate that preservation.

COMMENT: The affordable housing program does not in fact work very well. The waiting lists are so long and those with political pull are the ones getting in, not those truly poor.

RESPONSE: The Council believes that the affirmative marketing requirements ensure that all income eligible households have an opportunity to apply for affordable housing and administrative agents are required to utilize a random selection process when matching households to available units. The new rules at N.J.A.C. 5:96-17, 18, 19 and 20 relate to training for municipal housing liaisons and administrative agents and are designated to ensure that affordable units are administered fairly and in accordance with COAH's rules.

COMMENT: It is crucial that affordable housing be for legal residents of the United States and no affordable housing should be allowed to any illegal alien who is here in the United States unlawfully. Any such illegal alien who is not here legally discovered in any application should be turned over to the Federal immigration service for deportation proceedings. This housing should be for U.S. citizens.

RESPONSE: Application of the Council's regulations must be in conformance with State and Federal statutes and regulations, including 8 U.S.C. §1621, Aliens who are nonqualified aliens or nonimmigrants are ineligible for State and Local public benefits.

COMMENT: The commenter supports the COAH rule changes that provide new growth share ratios, raise the development fees for new construction, and restore the 25 percent senior maximum and welcomed any rulemaking that is effective in promoting the provision of housing affordable to all New Jersey families. The commenters encouraged COAH support for property purchases by municipalities and other innovative approaches to making land available to nonprofit organizations. What the new regulations have done has allowed individuals to live near where they work. The new ratios are realistic and appropriate and will maximize affordable housing opportunities where current development is taking place. From the Governor's ongoing pledge to create and preserve 100,000 affordable homes by the year 2015 to the current Assembly Speaker's legislative reform package, this support for affordable housing is crucial. There should be enough environmentally acceptable undeveloped land and land ready for redevelopment to meet the goal of 115,000 units. The good faith efforts of the Council on Affordable Housing and its staff in attempting to meet its statutory obligation, with the time and other constraints it faced, is acknowledged and appreciated.

RESPONSE: The Council appreciates the commenters' support.

COMMENT: The Council should seek increased Federal funding to provide more monies for affordable housing. Instead of imposing quantitative mandates for affordable housing upon municipalities, the Council should provide a pool of funds for which municipalities can "compete" for affordable housing projects. The Council should afford communities with appropriate established infrastructure priority access to funding. Key determinants that would factor in include the availability of public transportation, access to a viable job market, access to health care, and access to educational opportunities, including job training programs. When communities choose not to seek funds for affordable housing, allow those communities to develop on a market driven basis in accordance to established local government guidelines and guidance.

RESPONSE: The Council agrees that increased funding, infrastructure and proximity to jobs, and transportation are

key ingredients to establishing the most successful affordable housing programs. While these implementation issues are indeed vital, the Fair Housing Act and the proposed rules institute a regulatory process to ensure that municipal and regional land use regulations include realistic opportunities to create a quantifiable number of affordable housing units that corresponds with statewide targets. The Council has always strived to work cooperatively with other government housing agencies and funding programs. The Council furthermore encourages municipalities to work with developers in pursuing whatever governmental funding is available to fund affordable housing, including development fees. However, the Council has no authority over Federal and State programs that provide subsidies for affordable housing and does not provide any direct funding. Municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, market to affordable programs, redevelopment, and municipally sponsored programs. The rules also include an option for a municipality to phase certain components of its plan based on the feasibility of the proposed mechanisms.

COMMENT: COAH should talk about and advocate for legislation that would make the COAH process mandatory instead of voluntary and eliminate RCAs.

RESPONSE: The commenter should note that Assembly Bill number 500 proposes the elimination of regional contribution agreements (RCA). The Council intends to work with the Legislature in the future to mandate participation in its process.

COMMENT: Develop regulations to include agriculture labor housing as eligible COAH units. Labor to support agriculture is a large sector of the work force and is one of the lower-paid worker classifications; it is appropriate to target this group. However, based on the COAH regulations for "open marketing" of a COAH unit, the agriculture labor unit would not currently be able to comply. Ag-labor housing could be incorporated into the rules with reasonable criteria for eligibility. If COAH housing were permitted for preserved farms, there is the likelihood that these low and moderate units could be permanently restricted because the farm is permanently preserved.

RESPONSE: The New Jersey Supreme Court's *Warren* decision (*In re Warren*, 132 *N.J.* 1 (1993)) does not allow preferences for a targeted restricted population, with the exception of age-restricted housing. However, the Council recognizes that because this type of housing is specifically designed for farm laborers and is so integrated within the commercial farm, it could not be sold or rented as market rate housing. Therefore, under the proposed rules, farm labor housing does not incur a growth share if constructed on a commercial farm and classified as R2, R3, or R5 by the Uniform Construction Code.

COMMENT: Why has the *Mount Laurel* decision focused on 80 percent of median and lower? COAH needs to look at housing options for people from 81 to 120 percent of median. There is a shortage of options is this range as well.

RESPONSE: The Council is directed by the Fair Housing Act, at N.J.S.A. 52:27D-302a, to address the need for housing among people earning 80 percent of median income and less, and the proposed methodology is required to address that legislative mandate.

COMMENT: As long as the whole process is voluntary, there will continue to be municipalities that stonewall their obligation to provide affordable homes for the community members whose labor is vital to that community's continued well-being.

RESPONSE: The Fair Housing Act established the Council as a voluntary administrative alternative to the courts. Municipalities that do not participate are vulnerable to "builder's remedy" lawsuits. As a result, there are perceived inequities in implementing the low and moderate income housing obligation. The Council believes that participation in its process fulfills the constitutional affordable housing obligation, provides the municipality with protection from litigation, provides flexible options for addressing the affordable housing obligation, creates the opportunity to engage in sound land use planning, provides opportunities for public participation and provides priority access to funding. Municipalities participating in the COAH process are also able to collect development fees from market rate

development to meet their affordable housing obligations. In addition, the Council will propose an amendment to N.J.A.C. 5:97 in the near future to provide an incentive to municipalities that submitted petitions pursuant to the 2004 regulations to continue to participate in the COAH process. Specifically, municipalities will be eligible for a bonus credit for affordable units approved between December 20, 2004 and June 2, 2008.

COMMENT: There are many low income families in both urban and rural areas who cannot afford to maintain their homes. Credit for rehabilitating existing units is an affordable and practical solution to keeping low income families in decent housing in place and near existing support systems. The commenter understands this is no longer allowed.

RESPONSE: The rehabilitation program remains available to low- and moderate-income households. This provision has not been changed from prior rounds.

COMMENT: Land use law should be established to do the following: 1) protect the interests of residents to maintain the types of communities that they seek; 2) ensure fair, equitable and reasonable taxation; 3) preserve, protect and defend the integrity of the environment, the water supply and the beauty of nature; 4) encourage long-term (25+ years) planning; and 5) revitalize cities and "brown field" sites. COAH's policies not only facilitate the exact opposite in every one of those categories, but mandate it.

RESPONSE: The Council believes that the proposed methodology is entirely consistent with the requirements of the FHA. The Council is required to adopt all rules necessary for effectively carrying out the provisions and purposes of the Fair Housing Act (FHA). N.J.S.A. 52:27D-307.5. Comments on revisions to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., (MLUL) are outside the scope of the rule proposal.

COMMENT: The current plan would inadvertently raise the cost of existing homes through the wealth transfer thereby making it more difficult for these low income folks to move up to their first home. It will be a government imposed barrier by preventing people to move up. Not only will the poor be stuck at the bottom but you will put a wrench into the gears of a housing cycle that has allowed millions of Americans to move up to better housing. If you are bent on imposing government rules, then merely force townships to open their restrictions on single family residencies and allow apartments and two-family housing units in the same zone. Therefore, if you don't want to add an apartment on your house, then allow your neighbor to do so. This will not cost the taxpayers a dime!

RESPONSE: The proposed rules include provisions that encourage the use of multi-family and apartment development as municipal compliance mechanisms. An Accessory Apartment Program has also been part of the Council's rules for the past 20 years and continues to be included in the current proposal.

COMMENT: The municipal growth obligations established in the proposed rules will result in significant losses of agricultural uses and are inconsistent with State rules and policies governing the retention of agriculture. The rule proposal assumes conversion of all remaining non-preserved agricultural uses to residential or non-residential development to justify the municipal growth allocations which serve as the basis of a municipality's affordable housing obligation. The wholesale loss of agricultural uses as envisioned in the proposed rules will threaten the economic viability of agriculture in New Jersey. The Fair Housing Act provides for the adjustment of prospective need to provide for adequate land for recreational, conservation or agricultural and farmland preservation purposes. The proposed rules should be amended to provide adjustments in prospective need consistent with the State rules and policies pertaining to agricultural retention.

RESPONSE: The Council disagrees with the commenter's position and is unaware of any evidence to support this claim. The growth share methodology will capture affordable housing in proportion to the growth that occurs in each municipality. It is the municipality's responsibility to provide a balance of affordable housing opportunities and open space preservation in its master planning process.

COMMENT: The commenter is concerned that COAH's new rules take away all the credits that municipalities built

in the past. The rules do not reflect the credits that municipalities received as part of second round substantive certification.

RESPONSE: Credits for affordable units built on or after April 1, 1980, corresponding bonus credits for built units, units transferred to another municipality within the housing region pursuant to the terms of an RCA, and units that were rehabilitated subsequent to April 1, 2000 may all be used to address a municipality's affordable housing obligation, pursuant to the criteria in N.J.A.C. 5:97-4.

COMMENT: The Appellate Division said in its January 2007 decision that when you create too much of a burden on developers, you will retard development. The units will not get built. And the objective was for the towns to provide incentives and not to put it on the backs of the developers, but to team up with those that own the land and are inclined and in a position to provide of the units.

RESPONSE: The Council's rules do not prohibit a municipality from providing a subsidy or other incentive to a developer for the production and/or creation of affordable housing. The municipality is responsible for submitting a plan that meets its overall affordable housing obligation, as set forth in N.J.A.C. 5:97-2.4. Further, the commenter should note that the Council's rules will be amended in the near future to provide additional incentives to developers to provide affordable housing through inclusionary zoning. Lastly, the Council established standards for payments in lieu that average $ 161,000 per affordable unit, in keeping with the Appellate Division decision, *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1, *certif. denied*, 192 *N.J.* 71 (2007).

COMMENT: The references to projections provided in "Appendix F" are confusing, as Appendix F contains six discrete "Consultant Reports." And several of those reports contain appendices. Furthermore, Appendices A, B and C are also consultant reports. COAH should relabel and assign unique numbers or letters of the alphabet to all components of the Appendix to the proposed rule, to avoid confusion and facilitate compliance with and public understanding of the rule. Individual appendices should not have their own appendices, but rather should have exhibits. The reference in this rule to Appendix F is in reality a reference to a consultant report entitled "New Jersey Council on Affordable Housing, Task 1 - Allocating Growth to Municipalities," which is listed as item "2." at 40 N.J.R. 312. COAH should, to avoid confusion in implementing the Third Round Rules, develop and adopt a well-thought out appendix and report numbering scheme, without duplicative, confusing references.

RESPONSE: The Council does not believe such a change is necessary since each report has its own distinct title. However, the Council will amend the reports in the near future to relabel each Appendix within the report as an "Exhibit" instead.

COMMENT: The new third round rules, and the affordable dwelling unit assignments, do not take into consideration the unique constraints of community size for many towns in New Jersey. In particular, the many tiny historic towns and villages - former rural centers that were once the market centers for surrounding farmland - are struggling to maintain their identity amidst often explosive growth in adjacent townships. To require these small village centers, as the new COAH regulations would do, to take a one-acre isolated lot and build six apartment units, the minimum presumptive density, in the center of a cohesive neighborhood of small lot, single family units and destroy the fabric of that neighborhood would be an affront to sound land use planning and common sense. Rather than employing academic theoreticians to prepare their impracticable growth need numbers and theoretical affordable dwelling unit assignments, perhaps COAH would be better advised to work with the New Jersey Office of State Planning, in conjunction with local officials, to create more viable mechanisms that will help the many small communities to meet more rational numbers that take into consideration their unique developmental limitations.

RESPONSE: In the third round rules proposed in 2004, COAH allowed municipalities to provide their own growth projections. This approach was overturned by the Appellate Division, in January 2007. In these rules, the Council is taking vacant land, sewer and septic constraints into consideration in determining municipal growth projection adjustments. The Council is committed to working with other State agencies to create a cohesive State policy regarding

New Jersey's future development. Additionally, municipalities have a number of mechanisms available to them in meeting their affordable housing obligations. One such mechanism is the affordable housing partnership program, set forth at N.J.A.C. 5:97-6.13, which allows two or more municipalities to cooperate to build low and moderate income housing units. This program will be useful to small municipalities with limited infrastructure.

COMMENT: Although no supporting data was provided in the study conducted by Econsult Corporation, the discussion of a "spillover effect" on page 12 is concerning to our community. The allocation model used a spillover effect for municipalities, who have outgrown their physical constraints. It is unknown if the study's projected growth for our town was influenced by its two adjacent municipalities, which had experienced dramatic increases in population and employment during the last decade.

RESPONSE: As indicated in the report, the forecast model allocates countywide projected growth among all the municipalities in a county. The model projects growth for each municipality based on historic growth rates, including consideration of how close to build-out the municipality is, subject to the constraint that growth in all the municipalities in a county must sum to the projected county control total. The municipal level projections sum to the county totals because the county totals are the best available long term employment and housing projections available for the whole State. However, these projections are only available at the county level, and not the municipal level. There are instances in which there is insufficient land in the municipality to accommodate all the projected growth. In these instances, the growth beyond what the municipality can accommodate spills over into neighboring municipalities. The growth projections will be updated in the near future based on municipal level housing and employment growth observed over the period from 1993 through 2006. The municipal-level housing data will be updated through 2006 using certificate of occupancy information and information on demolitions, and employment data will be updated using 2006 data from the New Jersey Department of Labor and Workforce Development. The sample period is long enough to capture both periods of strength and weakness in the local economies and the projected growth is consistent with patterns observed in the past.

COMMENT: There should be a greater density bonus for suburban (16+) and urban (50+) markets.

RESPONSE: The rule is based on the relationship between affordable units required and additional market-rate units to be permitted as a compensatory benefit in the form of a density bonus. The value of additional market-rate density already considers varying values between suburban and urban markets.

COMMENT: Payment in lieu fees should be calculated based on a proportional method, relative to size and/or cost of a unit.

RESPONSE: The amounts set for payments in lieu represent a weighted average that takes low- and moderate-income splits, bedroom distribution regional construction costs and unit size into consideration.

COMMENT: Affordable housing requirement for rental projects should be no greater than 10 percent in urban areas, coupled with a sliding scale set aside which decreases as density decreases, and a requirement that high density development be within two miles of some form of mass transportation stations which include either light rail, or ferry stops, or are in a State-designated smart growth area. The commenter believes that such a rule change would encourage and promote development of attached, high density housing which is part of the overall "smart growth" strategy meant to steer development back into more urban areas.

RESPONSE: The Council will propose a rule amendment in the near future to address the commenter's concerns. The rule proposal will permit a 15 percent set aside for rental projects in qualifying areas as well an increased flexibility in the range of affordability and, as needed, in the bedroom distribution requirements. If the developer is able to demonstrate that the project is not financially feasible, then the project may be eligible for additional funding from the Department of Community Affairs' (DCA's) Balanced Housing Program.

COMMENT: The municipal growth obligations established in the proposed rules will result in significant losses of

agricultural uses and are inconsistent with State rules and policies governing the retention of agriculture. The rule proposal assumes conversion of all remaining non-preserved agricultural uses to residential or non-residential development to justify the municipal growth allocations which serve as the basis of a municipality's affordable housing obligation. The wholesale loss of agricultural uses as envisioned in the proposed rules will threaten the economic viability of agriculture in New Jersey. The Fair Housing Act provides for the adjustment of prospective need to provide for adequate land for recreational, conservation or agricultural and farmland preservation purposes. The proposed rules should be amended to provide adjustments in prospective need consistent with the State rules and policies pertaining to agricultural retention.

RESPONSE: The purpose of the vacant land analysis was to determine the availability and capacity of vacant land to support additional growth based on the regulations of all agencies with jurisdiction over these lands. COAH supports the objective of retaining economically productive agricultural land uses and does not dictate specific locations for affordable housing. It is the municipality's responsibility to develop an appropriate affordable housing plan and municipalities are encouraged to consider retention of agricultural lands as part of their broader land use planning.

COMMENT: The commenter applauds the new ratios requiring that one affordable unit be built for every four market rate units, and one affordable unit be created for every 16 jobs. They are realistic and appropriate and will maximize affordable housing opportunities where current development is taking place.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The revised COAH regulations make numerous assumptions regarding minimum densities that are inappropriate not only from a community character and community impact standpoint, but also from an available or proposed infrastructure standpoint. Municipalities should not be forced to increase densities in an effort to address excessive projections of growth.

RESPONSE: The rules are intentionally designed to set clear standards for municipalities and to create predictability for all parties. The proposed methodology is entirely consistent with the requirements of the FHA. The Council has promulgated a methodology that determines need by region, as required by the FHA, and then combines the regional need numbers to develop Statewide growth share ratios. While all growth generates a growth share obligation, municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, market to affordable programs, redevelopment, and municipally sponsored programs. Minimum densities and density bonuses are necessary parts of ensuring that inclusionary zoning is financially feasible and presents a realistic opportunity for the production of affordable housing. Properly crafted inclusionary zoning will provide a realistic opportunity to capture affordable housing as naturally occurring growth occurs. Density increases as proposed are modest and the council does not believe that any harm to community character will result. Additionally, it should be noted that where the availability of infrastructure is an issue, increased densities will only be a benefit in that compact forms of development result in lower infrastructure costs.

COMMENT: The commenter is concerned that the proposed rules do not provide enough affordability to very-low and low-income residents. COAH should create a category that defines very-low income at 30 percent of median or below, and require that 25 percent of each town's housing obligation address the needs of households in that category. In addition, COAH should give a density bonus to developers who build at least six units per acre, and that direct at least 10 percent of their affordable housing to households at or below 30 percent of median income.

RESPONSE: The Council does define "very low income" as 30 percent or less of the median gross household income under N.J.A.C. 5:97-1.4. Although the proposed rules do not establish a minimum requirement for very low income housing, the Council does recognize the need for housing that is affordable to very low income and has included several requirements and incentives to promote such housing. N.J.A.C. 5:80-26.3(d) currently requires that 10 percent of all affordable rental units be priced available to households earning not more than 35 percent of median, thus creating a requirement for very low rental housing. In addition, the rules include a requirement under N.J.A.C. 5:97-8.8 that at

least one-third of all development fees be used for affordability assistance to very low income households. A future rule amendment will clarify that a very low income bonus is available to for-sale units that are affordable to very low households earning 30 percent of median or below and to affordable rental units in excess of 10 percent of the total number of rental units. The Council believes that this strategy will provide sufficient incentives for municipalities to provide very low income housing while also providing opportunities for housing for those households between 30 and 50 percent of median. Municipalities may, through their zoning, create incentives for the provision of housing for very low income households. The Council believes that this strategy provides sufficient incentives for municipalities to provide very low income housing without thwarting the creation of housing for those families between 30 and 50 percent of median income. It should be noted that the Council will also consider future rule amendments to address the range of affordability. *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1, *certif. denied*, 192 *N.J.* 71 (2007) required that the Council provide a compensatory benefit or density bonus to all inclusionary housing developers, and the proposed rules reflect that requirement. Lastly, the rules will be amended in the near future to establish minimum presumptive densities by planning area and opportunities for municipalities to address very low income households through inclusionary zoning.

COMMENT: RCAs should be abolished as they violate the spirit, if not the letter of the law as articulated in the Mt. Laurel doctrine, as they foster the continued segregation of municipalities.

RESPONSE: Abolishing RCAs would be inconsistent with the FHA. Pursuant to the FHA, a municipality may propose the transfer of up to 50 percent of its fair share obligation to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter.

COMMENT: The commenter supports restoring the 25 percent senior maximum. This percentage more than adequately reflects the proportion of senior citizens among the State's low/moderate income population, rather than the 50 percent permitted under the previous rules.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The commenter supports raising the development fees for new construction. The increase - from one percent of equalized assessed value (EAV) for residential to 1.5 percent of EAV and from two percent of EAV to three percent of EAV for non-residential - is an appropriate change that will help create more funding for a municipality to address its constitutional affordable housing

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The commenter supports the proposed new standard for "payments in lieu" averages at $ 161,000 per affordable unit. It is commendable that COAH has established a standard for each COAH region. The $ 161,000 average reflects real costs and ends the problematic practice of each local municipality setting its own price.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The commenter strongly supports the rule changes that will create new, realistic growth share ratios. The new ratios requiring that one affordable unit be built for every four market rate units, and one affordable unit be created for every 16 jobs, are appropriate and will maximize affordable housing opportunities where current and future development will take place.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: Illegal immigrants should not qualify for affordable housing.

RESPONSE: The Council believes that the affirmative marketing requirements ensure that all qualifying income eligible households have an opportunity to apply for affordable housing. The commenter's concern should be directed to

the administrative agent responsible for income-certifying and qualifying eligible households. Application of the Council's regulations must be in conformance with State and Federal statutes and regulations, including 8 U.S.C. §1621, Aliens who are nonqualified aliens or nonimmigrants are ineligible for State and Local public benefits.

COMMENT: When are developments that have already been in the works grandfathered in?

RESPONSE: The rule will be amended at a future date to provide for a bonus for affordable units that received municipal approvals (preliminary or final approvals) or were included in a redeveloper's agreement between December 20, 2004 and June 2, 2008. The units had to have been proposed to address a municipality's growth share obligation in a third round Housing Element and Fair Share Plan that was included in a municipal petition for third round substantive certification between December 20, 2004 and January 25, 2007.

COMMENT: The commenter applauds COAH on this new proposal because it has some of the things that are necessary for us to move our cities forward. I'm glad that you've addressed the affordable ratios and the RCA amounts. I'm also glad to see that there will be inclusionary housing. The people who have been the fabric of this community have been displaced because they can't afford to live here any longer. Thank you for all that you're doing to make that a reality.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: It appears that the NCNBR analysis of vacant land that was used to allocate affordable housing obligations for the third round lumped all of the vacant parcels in each municipality together to achieve an acreage figure for each municipality. Unfortunately, the lumping of vacant acreage is misleading in that it does not reveal the many undersized and undevelopable slivers of land that exist in an otherwise developed community. Many older suburbs in New Jersey were the result of early "wildcat" subdivisions where there are still a number of vacant 25 foot wide lots that are not wide enough for a house and are not owned by a contiguous owner. These kinds of lots should not have been counted in the vacant land analysis, but it appears that they were. Consequently, the availability of vacant land in many of the older, developed communities in New Jersey has been inflated. Since these vacant land data were the basis for the allocation of the anticipated household and employment growth in the State, these numbers have been similarly inflated. Thus, a number of older developed towns have been given growth expectations and third round fair share numbers that they will be unable to address.

RESPONSE: COAH's consultants did not lump all lands together in its analysis. The overlaying of multiple spatial layers created hundreds of thousands of individual polygons, each with its own area and density. Each polygon had to have sufficient land area to meet the minimum lot size required by the associated density.

COMMENT: The commenter's concern with the rules as proposed is that they do not seem to contemplate a regional approach to the provision of affordable housing. Of particular concern is the significant growth projected in Atlantic City. Approximately 30,000 jobs and $ 10 to $ 15 billion in construction is anticipated in the next 10 years. Most of the workforce housing that would need to be constructed to accommodate this growth is anticipated to be built in outlying mainland communities. The commenter would like to see the rules revised to allow for this type of regional approach.

RESPONSE: The commenter should note that N.J.A.C. 5:97-6.13 allows communities to work together to address a portion of their respective affordable housing obligation.

COMMENT: Is there any assistance to private developers to get the towns onboard in accepting these projects and subsidizing part of them so they can be built?

RESPONSE: The commenter should note that the Council's rules will be amended in the near future to provide additional incentives to developers to provide affordable housing through inclusionary zoning.

COMMENT: COAH should provide additional opportunity for public comment based on supplemental information in support of the rule proposal that was released after the rule proposal date. The information released by COAH includes data that is essential to an understanding of how the agency determined municipal growth allocations and as such affordable housing obligations that are central to the purpose of the proposed rule that were released after the date of rule proposal. For example, the data released provides the technical basis of how the agency determined whether there was sufficient vacant land and capacity to support projected increases in population and employment, and how they estimated increases in population and employment through 2018 which served as the basis for determining the regional and statewide affordable housing need and a municipalities fair share in accordance with the requirements and authority under the Fair Housing Act. The information includes data that was not previously publicly available such as information on environmentally constrained lands, development potential of lands, estimates on population and employment growth projections. In many cases this information is either not attributed to a public source or represents the proprietary work product of consultants retained by COAH to establish the technical basis of the proposed rule. There is no explanation of the source or terms of art used in the information to allow an interested party the opportunity to understand its meaning. For example, the data released by COAH includes the calculations of each municipality's historical build-out levels in the respective County that are an essential element to establishing a municipalities growth share obligation. This information includes data referred to as "hank_post02_capacity_units" without providing any explanation of what that term means anywhere in the rule proposal. There are factual errors and omissions in the published information that need to be addressed prior to rule adoption. The data released by COAH included a GIS file entitled "DEP Septic Density Limits" which was used to determine the growth capacity of a municipality. The information contained in this file includes terms of art that are not explained in the rule proposal, and erroneously shows portions of Warren County as draining to the Metedeconk River (Ocean County) and South Branch of the Raritan River (Hunterdon County).

RESPONSE: The Council does not believe an extension of the comment period is warranted; however, the commenter may contact the Council with any questions. The Council responded to over 60 OPRA requests requesting the information, and for the convenience of the public, has made the information available on the COAH website. If the commenter needed the information to prepare comments to the Council, an OPRA request could have been filed well in advance of the comment deadline. All the information the commenter is seeking is delineated in the Appendices or on COAH's website.

COMMENT: The rules should permit municipalities to address their obligations without having to rezone land in order to receive substantive certification and the rules should be revised accordingly.

RESPONSE: Municipalities are not required to rezone land in order to receive substantive certification. In fact, municipalities can utilize a myriad of compliance methods to create affordable housing opportunities.

COMMENT: New development is not solely responsible for 100 percent of the current and future affordable housing needs in the State. Therefore, it is arbitrary and unreasonable to place the entire burden of fulfilling the affordable housing needs on the relatively small amount of developable land remaining in the State. The bulk of the burden should be carried by the State.

RESPONSE: Municipalities may meet their affordable housing obligations through a variety of mechanisms. Zoning is one such mechanism, and other options available to municipalities include rehabilitation of existing units, creation of elder cottage housing opportunities (ECHO) units, redevelopment, municipally sponsored 100 percent affordable developments, accessory apartments, a market to affordable program, provision of supportive and special needs housing, assisted living residences, regional contribution agreements, the affordable housing partnership program, and extension of expiring controls.

COMMENT: Have you thought about giving the developers a double credit for each unit they build that is energy efficient, that is, Leadership in Energy and Environmental Design (LEEDS)? If you offered the carrot of building these units in a certain time period, say before any COs could be issued on the main project, the developer if he owed six

units would only have to build three. The benefits are many. Faster construction of the affordable units, a reduction in energy needs (something the state is also trying to accomplish) and it would help ensure that the renters or owners of these units would still be able to afford them into the future.

RESPONSE: A municipality's affordable housing trust fund may provide assistance to homeowners and tenants to purchase energy saving mechanisms and in turn make their units more affordable to heat. However, making units more efficient does not provide more units for low- and moderate-income households. Municipalities may continue to use the trust fund for assistance, but not for new construction credit.

COMMENT: New Jersey identifies itself as the "Garden State," so why aren't COAH and other State regulatory groups working equally as hard to preserve the farmlands, rather than further development?

RESPONSE: COAH supports the premise of the State Development and Redevelopment Plan that lands in Planning Areas 1 and 2 as well as designated centers are the most suitable for higher density development. All New Jersey municipalities, however, have a constitutional obligation to address their fair share of the regional housing need. COAH certainly supports the activities of the Department of Agriculture and towns to preserve viable farmland.

COMMENT: The Fort Monmouth Economic Revitalization Planning Authority is charged with producing a strategic revitalization and reuse plan and zoning map to guide the future reuse of Fort Monmouth following the closure of the base. Since the underlying affordable housing obligations are municipal responsibilities, can individual municipal COAH obligations be satisfied on a regional basis? As the Authority fashions the revitalization and reuse options for Fort Monmouth, knowing whether the Authority can plan to meet this need regionally will be an important factor in arranging land uses and functions within the footprint of Fort Monmouth.

RESPONSE: The commenter is referred to N.J.A.C. 5:97-3.16, Coordination with other State agencies, and N.J.A.C. 5:97-6.13, which provides the requirements for affordable housing partnership programs. The rules will be amended in the near future to create opportunities for municipalities to work with regional planning commissions and authorities to address affordable housing obligations on a regional level and to expand the provisions for affordable housing partnership programs to create such opportunities.

COMMENT: There is no Environmental Impact Analysis presented with these rules. The rules should include an Environmental Impact Analysis. Implementation of COAH rules could have profound impacts on the environment, as they have in the past. The impacts of large-scale inclusionary developments that exceed local infrastructure capacity, negatively impact natural resources and degrade community character have been both detrimental and severe, and should be appropriately recognized in the rule.

RESPONSE: The Council believes that the Smart Growth Impact addresses the commenter's concern. The Council also believes that the SDRP and State regulations protecting critical resources are adequate in assessing specific municipal sites.

COMMENT: The COAH rule repeatedly refers to and takes guidance from the State Development and Redevelopment Plan. However, the 2001 Plan is currently out-of-date, lacking both new DEP base data and the results of the recent cross-acceptance process. The Cross-Acceptance Process that concluded last year after public hearings and staff-to-staff meetings in 21 counties resulted in changes to Planning Areas that have not yet been incorporated into the SDRP. The SDRP has not yet officially released its updated plan.

RESPONSE: The State Planning Commission is expected to adopt an updated Plan by the end of 2008. COAH intends to work cooperatively with the State Planning Commission and to update the Memorandum of Understanding in the near future. If there are questions regarding site suitability of a proposed site for affordable housing, N.J.A.C. 5:97-3.13(c) gives the Council the discretion to seek guidance from other applicable agencies and to require the submission of all necessary documentation to those agencies to determine compliance. In many instances, this process would most appropriately be coordinated through the Office of Smart Growth. Further, N.J.A.C. 5:97-3.13 requires that

affordable housing sites shall be available, approvable, developable and suitable and shall be in compliance with the rules or regulations of all agencies with jurisdiction over the site, including all applicable regulations of DEP.

COMMENT: Edgewater contains a portion of the Hudson River Walkway along its waterfront, an urban linear park that provides contiguous unhindered access to the water's edge. In 1988, the New Jersey Department of Environmental Protection created the Coastal Zone Management Rules, which outlined the regulations and specifications for its construction. They require anyone building within 100 feet of the water's edge to provide a minimum of 30 feet wide open, public space along it. This land is permanently considered open space.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture and Department of Environmental Protection. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. They also used the most currently available open space data from the Office of Smart Growth, and only estimated that development would occur where the net vacant land polygon met the minimum lot size required.

COMMENT: It is important for all of us to recognize that the need to provide affordable housing must be balanced with the need to support urban revitalization and development, particularly in times of economic recession. And inclusionary zoning is beneficial because it prevents the seclusion of low income people to remote areas in society, which can lead to social problems. However, placing the burden on creating affordable housing solely on the shoulders of developers without a subsidy or other incentive could potentially undermine the development initiatives, especially in unproven urban markets that require risky investments. Accordingly, COAH must be cautious so that it does not reduce investments in new housing, which would obviously curtail new affordable housing as well. As drafted, these regulations will have a disproportionate impact on cities such as Jersey City. For example, requiring one affordable unit to be built for every four market rate units and not granting credit for workforce housing, places our future development at a disadvantage to that of the suburbs. The commenter urges COAH to rethink these regulations from an urban perspective as well.

RESPONSE: The Council appreciates the commenter's information on the urban perspective. Affordable housing development must always occur within the broader context of an municipality's previously created affordable housing stock and the location of new growth. Affordable housing obligations incurred by development need not be addressed at that site, but municipal-wide, through a coordinated Fair Share Plan.

COMMENT: If Highlands towns are not intended to grow according to State policy, perhaps they should not have (and should never have been assigned) a regional affordable housing obligation; perhaps they should only be required to address their own indigenous affordable housing needs. This concept is certainly consistent with the *Mount Laurel II* decision and makes sense in the context of the State's growth policies.

RESPONSE: The 88 towns located within the Highlands region continue to have a constitutional obligation to provide for affordable housing, within constraints imposed by the Highlands Act. The Council has updated its methodology to include data provided by the Highlands Council, thereby making the projections for the Highlands towns more realistic and attainable.

COMMENT: The Borough is concerned about the dramatic increase in the number of jobs projected for Edgewater to 2018. The projections show 4,374 net jobs between 2004 and 2018, while the prior housing plan prepared by Burgis Associates shows an increase of 1,127 jobs between 2004 and 2014 (which results an increase of 3,247 jobs in four years from 2014 to 2018). The projections are based on data since 1993. Since 1993, Edgewater has seen a dramatic change in the character of its community - along with massive redevelopment. The projections don't take into account the jobs that existed, as the majority of the waterfront was industrial/commercial. In other words, the projections do not subtract out the loss of jobs from the redevelopment that has occurred to those prior industrial/commercial sites. The result of the projected number of jobs to 2018 creates an obligation of 273 affordable housing units, versus 45

affordable housing units in the current Edgewater Round 3 plan. The ratio of people to jobs in 1920 (1918) was one person for every 2.2.8 jobs; in 2003, the ratio of people to jobs was 2.61 people for every one job. The shift in land use from predominantly industrial to predominantly residential over the last 100 years (more particularly in the last 30 years) should provide evidence that the projections for jobs in Edgewater far exceeds realistic expectations.

RESPONSE: Job losses through redevelopment are captured in the New Jersey Department of Labor and Workforce Development's (NJDLWD's) employment numbers. In addition, the projections recognize that all of the municipalities in Bergen County have very little land available for development.

COMMENT: The obligation resulting from growth between 2004 and 2008 should be based upon the initial third round rule requirements of 1/25 and 1/9.

RESPONSE: The rules will be amended in the near future to provide a two for one compliance bonus for municipalities that approved affordable housing units between December 20, 2004 and June 2, 2008, provided the units were included in a third round fair share plan submitted to COAH prior to January 25, 2007.

COMMENT: Please explain how COAH determined that growth share represents a fair allocation of the region's prospective need for affordable housing. In other words, is it COAH's position that growth itself justifies the allocation, regardless of other factors, such as differences in economic feasibility between locations?

RESPONSE: It is COAH's position that growth share is the fairest way to allocate affordable housing need (despite regional and municipal disparities) because it is sensitive to and comprised of both housing demand and housing supply. "Housing demand and housing supply are linked because a household is an occupied housing unit. Thus, a projection of the need for housing in households will ultimately be closely related to a projection of the future supply of housing units. Often, however, supply lags demand, and the most current projection of demand actually leads the most current projection of supply for an area. They cannot be too different since, except for vacancy, they are supposed to be identical. Supply is altered somewhat by demand and, in turn, demand is altered by the availability of supply. Future demand iterates future supply and vice versa" (Burchell, page 89).

COMMENT: The commenter urges COAH to come out with the forms that you're requesting us to fill out early so that municipalities and planners can start to look at them and decide what information is required. Municipalities are going to be given a very short time frame in which to comply with the new rules once they are adopted. And the sooner that you can get out forms and model ordinances and things like that even while the rules are still under consideration the commenter would really appreciate that and it would make it a lot easier for municipalities to comply. The late provision of the consultant's data did not give enough time for local review. The rules need a table of contents. The commenter requests COAH provide each municipality with either the data layers in formulating the calculations or a map. Specifically, the commenter requests a digital map that shows the polygons of vacant land that could be cross referenced with existing municipal digital data or by reconnaissance survey of the municipality. The supplemental data released by COAH subsequent to the rule proposal date includes data that is essential to an understanding of how the agency determined municipal growth allocations and as such affordable housing obligations that are central to the purpose of the proposed rule. Therefore, the public comment period should be extended for an additional 60 days and/or the rule proposal should be re-noticed to comply with the Administrative Procedures Act.

RESPONSE: It is the Council's intention to provide municipalities with all sample, model and form documents in advance of drafting a Housing Element and Fair Share Plan. A table of contents will be prepared by the Council after the publication of the rules in the New Jersey Register; in addition, each chapter in the Administrative Code includes a table of contents. The public comment period ended March 22, 2008. Pursuant to N.J.A.C. 5:94-5.6, however, a municipality may request an adjustment to its household and employment projections based on an analysis of existing land capacity. The data requested by the commenter is available on the Council's website. The published geospatial data used by the consultants in the vacant land analysis was available throughout the public comment period upon request. The Council posted the data on March 14th as a convenience to the public. Given the Court's deadline of June 2, 2008

for adopting revised third round rules, the Council does not believe an extension of the public comment period is appropriate.

COMMENT: With the new number, it doesn't appear possible for us to implement this plan without seriously impacting the property taxpayers of our town, primarily because the developer's fees aren't high enough. The developer's fee does not cover the cost of providing the affordable housing, either in the RCA or in developing them ourselves.

RESPONSE: In accordance with the FHA, the Council has broad authority to promulgate all rules necessary for carrying out the provisions and purposes of the Act, which includes the establishment of appropriate development fee rules specifying, among other things, the standards for these development fees. To assist municipalities in generating additional funding for affordable housing activities, including RCAs, the Council has increased the residential development fee percentage from one percent to 1 1/2 percent of equalized assessed value (EAV), and now provides for the option of using a sliding scale development fee ordinance that imposes a residential development fee of up to two percent of EAV. In addition, the Council has increased the non-residential development fee percentage from two percent to three percent of EAV. The Council believes that these increased percentages are appropriate and necessary to foster the production of affordable housing.

COMMENT: Four years have already passed since the start of the growth share obligation. In those four years, houses have been built in our township without an inclusionary ordinance. The housing that's built in the next three years more than likely will be built under previous approvals. So that means that fully half of the houses for the 14-year need period will be built without "in lieu payment," only based on developer fee which is very clearly not enough to cover the cost of low-income housing.

RESPONSE: Providing affordable housing has been an ongoing constitutional obligation since the *Mount Laurel* decisions and the enactment of the FHA of 1985. Affordable housing obligation figures have been generated by the Council, pursuant to the FHA, for the periods 1987 to 1993 and 1993 to 1999. During the 12-year period covered by the first two sets of the Council's rules, planning for affordable housing has become a routine process at the local level. The release of third round obligations was delayed while the Council awaited the release of 2000 Census data so that maximum accuracy in the development of a new methodology could be achieved. To exclude development approvals that were granted prior to 2004 where certificates of occupancy will not be issued in cases until after January 1, 2004 would be inconsistent with the growth share methodology developed by the Council, and would result in an unacceptable dilution of the affordable housing need. Moreover, while certificates of occupancy generate the growth share obligation, this is distinct from the compliance mechanisms available to address that obligation. Municipalities have available a myriad of options for meeting their affordable housing obligations, of which inclusionary development is only one option. These options are described in N.J.A.C. 5:97-4. For instance, municipalities may negotiate higher set-asides on some inclusionary sites, undertake a municipally-sponsored construction project or an accessory apartment program. Municipalities may use development fees and payments in lieu, among other mechanisms, to finance affordable housing production.

COMMENT: Wayne Township has fulfilled its obligation to provide affordable housing units under prior rounds 1 and 2 and has physically constructed affordable units in excess of its obligations demonstrating its commitment to satisfy its constitutional obligation to provide affordable housing within its community. The township has made a good faith effort to comply with third round rules and has submitted an application seeking substantive certification to COAH. To have the rules change at this juncture is expensive, time consuming and does not encourage a municipality's participation in the process. The township finds the issue of providing affordable housing a moving target for which a conclusion must be sought. Given the complex nature of this issue the township asks that municipalities be afforded, to the greatest extent possible, as much flexibility and benefit of the doubt in helping communities meet its affordable housing obligations. Further, communities such as Wayne who have physically constructed a substantial number of affordable housing units should not have to be burdened with additional units to compensate for those communities that have not constructed its fair share. This presents an unfair burden on this community. In the view of the township, the

present proposed rules do not address this issue and further, Wayne Township feels victimized particularly with respect to regional need where additional allocations are heaped upon Wayne Township resulting in further development that is destroying the fabric of this community while other communities have failed to otherwise live up to its obligations.

RESPONSE: The commenter should note that the FHA and the proposed rules create a voluntary process. Municipalities that choose to participate in the Council's process are required to provide a realistic opportunity to meet the required affordable housing resulting from the growth share projections. The Council's rules clearly provide an incentive for municipalities to comply by providing them protection from exclusionary zoning lawsuits. The proposed rules provide flexibility and a variety of options to enable municipalities to meet their constitutional affordable housing obligations, which the Council believes creates an incentive for municipalities to participate in its process. The Council believes that participation in its process fulfills the constitutional affordable housing obligation, provides the municipality with protection from litigation, provides flexible options for addressing the affordable housing obligation, creates the opportunity to engage in sound land use planning, provides opportunities for public participation and provides priority access to funding. Municipalities participating in the COAH process are also able to collect development fees from market rate development to meet their affordable housing obligations. In addition, the Council will propose an amendment to N.J.A.C. 5:97 in the near future to provide an incentive to municipalities that submitted petitions pursuant to the 2004 regulations to continue to participate in the COAH process. Specifically, municipalities will be eligible for a bonus credit for affordable units approved between December 20, 2004 and June 2, 2008. The Appellate Division decision in 2007, *Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1, *certif. denied*, 192 *N.J.* 71 (2007), upheld in part and remanded in part COAH's third round regulations and stayed grants of substantive certification pending revision to COAH's third round regulations. The Council received an extension form the Court until June 2, 2008 to implement revised third round rules. The Council recognizes the increased obligation placed upon municipalities through the revised growth share ratios. In order to assist municipalities in meeting these goals, the revised third round rules provide various mechanisms and incentives to aid both municipalities and developers in planning for and developing affordable housing. These mechanisms include inclusionary development, municipality sponsored construction, bonus credits for rental projects, accessory apartments and market to affordable programs. These options are described in N.J.A.C. 5:97-4. Municipalities may use development fees and payments in lieu, among other mechanisms, to finance affordable housing production or RCA projects.

COMMENT: The commenter strongly objects to the proposed COAH rules. The ratio of one affordable unit to the five market-rate units is much too high and will severely put a severe financial strain on us and many municipalities, including rural communities. Municipalities have limited control over the growth that occurs within our boundaries. And not only does the residential growth increase the burden on our schools, but now under the proposed rules, a significant burden to provide a higher number of affordable units is added. The excessive nature of the proposed rules almost guarantees that a builder's remedy will be the only way to satisfy the COAH mandate. Small rural towns don't have the funds to meet the COAH obligation on their own. It makes no sense to provide affordable housing in neighborhoods where there are few, if any, jobs and where every adult needs a car in order to survive. Each new market-rate residential unit not only degrades our rural character, but also brings with it a COAH obligation that increases the degradation further. This policy will encourage large lot zoning which will slow the creation of housing and increase prices. There should be some recognition to the proposed rules of the importance of preserving the rural character and the environmental quality of our rural town. The proposed COAH rules, unlike those that preceded them, will contribute to accelerate the destruction of our rural New Jersey community. The process will lead to environmental degradation in our communities. Development should be focusing around cities and areas that already support a work force. Many of these rural areas do not have any public transportation available to them, and there is none proposed.

RESPONSE: Municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction through inclusionary zoning such as accessory apartment programs, market to affordable programs, redevelopment, regional contribution agreements and municipally sponsored programs. The rules include an option for a municipality to phase certain components of its plan based on the feasibility of the proposed mechanisms. The

Council would like to point out that the RCA program is voluntary. The Council believes that it is the municipality's responsibility to determine appropriate affordable housing opportunities in its master plan. The Council disagrees with the premise that the implementation of a sound comprehensive plan for a community which includes affordable housing will cause environmental degradation. The Council intends to continue working cooperatively with other State agencies and to provide clear direction to municipalities on affordable housing policy goals. The Council currently has memoranda of understanding with the State Planning Commission, the Pinelands, the Meadowlands, and the N.J. Department of Environmental Protection, all of which the Council intends to update and expand. In addition, the Council intends to enter into an MOU with the Highlands Council in the near future. In accordance with the site suitability provisions at N.J.A.C. 5:97-3.13, the Council reviews all sites designated to produce affordable housing for consistency with the State Development and Redevelopment Plan. The Council also encourages center-based development and other forms of compact development. In keeping with Smart Growth objectives, the rules will be amended in the near future to provide bonuses for affordable housing within Transit Oriented Developments and redevelopment areas. The consultants have been working with DEP to incorporate additional information with regard to increasing the size of certain stream buffers and refining where development may be permitted within floodplain areas, both of which are regulated by the recently adopted Flood Hazard Control Act. In addition, they are updating the vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rule changes. In a future amendment, the Council will strengthen its rules to require that clustering, lot size averaging and/or attached housing be permitted in inclusionary zones.

COMMENT: The commenter is concerned about substandard conditions that allegedly exist in Bedminster's Hills and Cortland neighborhoods. The commenter alleges that there exists structural damage from insufficient roofing and, as a result, an extensive dispersion of toxic mold.

RESPONSE: This is outside the scope of the Council's rule proposal.

COMMENT: Until the third round, COAH allowed communities to meet their fair share obligation by picking a number of vacant sites, increasing the density and setting aside 20 percent of the units for low and moderate income housing. Through this mechanism, the growth that had occurred community-wide could be satisfied by a few such instances. Now the current formula indicates that every residential development, without regard to density incentive or other modification, must provide for a 20 percent set aside itself. On top of this, non-residential development must produce one affordable housing unit for every 16 jobs. In these instances, the inclusionary mechanism simply is impractical. Unlike the second round, inclusionary housing cannot be used to offset an obligation generated by other residential or non-residential growth. Sites which set aside a 20 percent affordable housing obligation can only meet the growth share that is generated by that development. There is no ability to transfer the growth that occurs either by individual or a few single family units, from other or non-residential developments to inclusionary developments. The only mechanisms realistically available for communities therefore, to meet their obligation, is to build 100 percent affordable housing in the community and to collect fees from developers based on a payment-in-lieu formula. The problem with this is that the growth share ratios are so high and the payment-in-lieu fees are so high, that if all of the obligation is passed on to the developers, it would stop development in its tracks. Under that formula, office tenants seeking to expand may not go forward with the development, and are likely do seek alternative locations in New York State where this surcharge does not apply. Therefore, communities that would like to allow for non-residential development to continue to occur and to provide incentives for their corporate citizens to stay and for non- residential rateables to be generated, are fearful that the COAH rules will drive tenants out and halt development altogether. If towns do not seek the full payment-in-lieu from the developers, the existing tax payers would have to subsidize the low or moderate income housing obligation from that development. This obviously would not be acceptable or fair. The result of these formulas is that no growth will take place, wherein everybody looses. These ratios have to be brought down to a manageable level and a cost such that development can go forward and that affordable housing can realistically be built, as has occurred in round two of the COAH cycle.

RESPONSE: The rules will be revised in the near future to provide presumptive densities and set-asides for inclusionary developments, which will permit presumptive set-asides over 20 percent.

COMMENT: Fair share is a remedial concept. It is intended to remedy exclusionary zoning in particular townships and the regions from which those townships draw people that work in the town. The new regulations are unconstitutional insofar they require towns to grow in excess of their own existing zoning schemes, so that the towns can meet an affordable housing obligation to "remedy" wrongful exclusionary zoning, absent any particularized showing that a town (or region) has ever engaged in exclusionary zoning.

RESPONSE: Pursuant to the Mt. Laurel doctrine, every municipality has a constitutional obligation to provide for its fair share of low and moderate income housing. By employing a growth share methodology, a municipality will address its constitutional obligation to provide affordable housing in proportion to its growth.

COMMENT: Within the Highlands preservation, which is about 440,000 acres, there are written into the law "exemptions," and every lot of record could potentially get a house. According to the Highlands Council, in the preservation area there could be as many as 10,000 exemptions because there may be as many as 10,000 lots of record. Many of these towns may or may not even want these houses, but they're going to happen because of exemptions, and accrue a growth share obligation. There has to be some kind of flexibility to make sure that these towns are going to be building group homes or some other mechanism for them to be able to meet their obligation.

RESPONSE: There are several affordable housing mechanisms available to all municipalities that do not involve inclusionary zoning or necessitate the development of vacant land. These include an accessory apartment program, a market to affordable program, supportive and special needs housing, regional contribution agreements, an affordable housing partnership program, and extension of expiring controls. In addition, bonuses for rental units and very low-income housing are also available. Other innovative approaches meeting the Council's basic requirements for the provision of affordable housing will also be considered by the Council.

COMMENT: The proposed rules lack of sensitivity to context in setting growth share obligations is a profound flaw. COAH should consider alternative approaches that include more decisive, planned intervention into the municipal land use process. COAH should consider mandatory zoning for affordable housing planned at the county or regional level, with mixed-style and mixed-cost housing focused within well-designed growth boundaries for existing cities, towns and villages; financial incentives and disincentives on county and municipal governments to take direct responsibility for bringing about affordable housing development, rather than passively resisting it or accepting a low percentage of affordable housing as the price for typical greenfield subdivisions; and other measures that separate the creation of affordable housing from the inevitable creation of so many market units regardless of context.

RESPONSE: The Council encourages municipalities to implement the commenter's suggestions in the context of the municipal master planning process. Pursuant to the FHA, the Council has jurisdiction over any municipality that participates in the COAH process, but does not have jurisdiction over county government. The Council requires consistency with the SDRP with regard to site suitability in will amend its regulations in the near future to provide incentives for affordable housing located in smart growth areas and redevelopment areas.

COMMENT: COAH should eliminate the entire notion of growth share, which is a perpetual moving target, and replace it with a method of determining municipalities' affordable housing obligations that is similar to the method for calculating obligations under the first and second rounds of COAH's rules. By providing specific targets, municipalities will no longer be faced with perpetual moving targets that create the dilemma of trying to catch up in providing affordable housing that is caused by the gaps that the proposed Third Round inclusionary zoning mechanism creates and the burden of struggling to find funds to pay for catching up. As a result, municipalities will have a greater degree of certainty in developing their strategies for addressing their affordable housing obligations and budgeting for their financial obligations associated with addressing their affordable housing obligations.

RESPONSE: The Council believes that the growth share methodology, which is complemented by a projection in the rules, gives municipalities predictability and certainty in meeting their affordable housing obligations.

COMMENT: The proposed rules will interfere with the market to a greater extent than in the prior cycles and, by imposing 20 percent growth share requirements on municipalities, will interfere with the efficacy of sound local land use planning by inhibiting development that would have far reaching positive impacts (such as redevelopment of a struggling downtown). The proposed regulations also limit the ability of municipalities to effectively use inclusionary zoning an effective technique to meaningfully address their fair share responsibilities since a municipality can achieve a benefit from inclusionary zoning only to the extent that the set-aside exceeds 20 percent. Also, the proposed rules will have the effect of increasing the price of housing for those just over the "moderate income" brackets, potentially creating more households paying disproportionate percentage of household income for housing. The Fair Housing Act states that there are a number of essential ingredients to a comprehensive planning and implementation response, including the establishment of reasonable fair share housing guidelines and standards, the initial determination of fair share by officials at the municipal level and the preparation of a municipal housing element, State review of the local fair share study and housing element, and continuous State funding for low and moderate income housing to replace the federal housing subsidy programs which have been almost completely eliminated. State funding and developer contributions in affordable units and monies will not suffice to meet the $ 18 billion burden created by the need to create 115,000 units given that the average subsidy to create an affordable unit is $ 161,000. Thus, these regulations promise to impose a crushing burden on the taxpayers of our State in contravention of the Fair Housing Act, which prohibits COAH from forcing municipalities "to raise or expend municipal revenues in order to provide low and moderate income housing." N.J.S.A. 52:27D-311(d). COAH needs to reconsider its policies and the practical ramifications of its regulations so that it can strike a sounder balance among (1) the interests of developers in an "adequate profit" (*Mount Laurel II* at 267 n. 29); (2) the interests of low and moderate income households in decent, affordable housing; and (3) the interest of municipalities in balancing the many competing public interests they face including those of low and moderate households.

RESPONSE: The Council does not believe its methodology will negatively affect New Jersey's economic growth. In addition, the Council is considering the following: -- The Council will amend its rules in the near future to provide a Smart Growth bonus for affordable units created in PA 1, 2 or Designated Centers as part of a Transit Oriented Development. -- The Council will amend its rules in the near future to provide a redevelopment bonus for affordable housing located in redevelopment areas. -- Municipalities have the flexibility to use a variety of mechanisms; and can choose based on economic goals to assess a developer a payment in lieu. -- FHA determined that each municipality has an obligation to address its region's fair share obligation. The Council is responsible for determining each municipality's obligation using a growth share approach, based on municipal housing and job growth. -- The Council has established standardized payment in lieu to create predictability. -- Also, there is a pending bill in the Assembly, A500, that would eliminate payment in lieu for non-residential sector and instead impose a statewide development fee.

COMMENT: The commenter is pleased to see that the mandatory linkage between COAH certification and Plan Endorsement has been removed.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: A rule should be added to limit the number of affordable units that can be required, based on the current size of the community. The commenter suggests 15 percent of the total existing market-rate housing be the cap for new affordable units. As an alternate increase, the cap could be made at 20 percent and provide credit for affordable units completed for Rounds One and Two.

RESPONSE: Proposed N.J.A.C. 5:97-5.5 carries forward the cap for the prior round obligation of 20 percent of the occupied housing stock (community capacity at the time the municipality requests the 20 percent cap for the first time). Pursuant to N.J.A.C. 5:97-5.6, a municipality may also request an adjustment to its household and employment projections based on an analysis of existing land capacity.

COMMENT: The proposed regulation does not take into account historic preservation factors contrary to the explicit language of the FHA. In addition, the proposed regulation does not take into account the explicit provisions of

the Act in that it will destroy farmland that the State, county and town have already purchased. And it is equally clear that the proposed regulation does not take into account the fact that it will drastically alter the established patterns of development and result in costs prohibitive to the citizens of Cranbury in violation of the FHA.

RESPONSE: In determining the amount of vacant land available, spatial data showing the following areas were subtracted out: All lands within the legislated boundary lines of the New Jersey Highlands, Pinelands and Meadowlands; Lands already developed (IDs 1 - 5 in Dictionary); Undeveloped-Unavailable Lands (IDs 10 and 11); Undeveloped Wetlands (ID 9); Public open space, parks, etc. (from OSG); Private open space (from OSG); Preserved farmlands (from N.J. Department of Agriculture); Buffers around C-1 streams (calculated by Center); Developed areas within LU/LC code 1700 (from DEP); and Upper Wetlands Boundary/Upper Wetlands Limit (from DEP). The lands that were removed in this process included those that were already developed; waters and wetlands where development is either not permitted or highly restricted under current DEP rules, including 300-foot buffers around all Category One streams and their primary tributaries; parks, and privately and publicly acquired lands for open space or land conservancy purposes; preserved farmlands; and other lands deemed by DEP to be unavailable for development pursuant to current environmental rules and regulations. Additionally, buffers were constructed along all such streams consistent with the riparian zone definitions using this DEP stream classification data, and the new rule regulates the 150-foot transition areas required along freshwater wetlands of extraordinary resource value and 50-foot area along wetlands of intermediate resource value stipulated in the State's Freshwater Wetlands Protection Act rules (N.J.A.C. 7:7A). The Council was unable to locate or obtain any database that classifies the State's six numerous wetlands into these resource value categories. After discussions with DEP, it was decided that a 100-foot buffer would be created along the boundaries of all unmodified and unaltered freshwater wetlands as a surrogate in this analysis. Further, N.J.A.C. 5:97-3.13(b)5 states that sites designated to produce affordable housing shall be consistent with the State Development and Redevelopment Plan and shall be in compliance with the rules and regulations of all agencies with jurisdiction over the site, including historic and architecturally important sites and districts listed on the State or National Register of Historic Places. Within historic districts, a municipality may regulate low- and moderate-income housing to the same extent it regulates all other development.

COMMENT: The last decade has seen a serious decline number of affordable housing units constructed in New Jersey. Some municipalities have used significant public resources and have gone to great lengths to game the system to insure that little or no new affordable or market housing is constructed within their borders. The rules as proposed will only facilitate this conduct. Further, they are so cost prohibitive that it will make it difficult if not impossible to construct new inclusionary multi-family rental housing in the state. Any new rules must contain realistic market driven incentives for builders and zoning requirements for municipalities if COAH really intends meet the 100,000 unit need identified in its proposed rule.

RESPONSE: The Council will amend the rules in the near future to incorporate additional market rate incentives and/or reduced set-aside requirements to construct rental housing in certain markets.

COMMENT: There are a number of properties in Edgewater that are contaminated and under the jurisdiction of the NJDEP or the U.S. Environmental Protection Agency (EPA) yet were included as vacant land in the Rutgers vacant land analysis. These environmental contamination issues should be factored into Edgewater's affordable housing obligation and the time frame for obtaining its obligation. The QUANTA site has been under study and "remediation" in excess of 20 years and the Borough is handcuffed in terms of developing this property, since its is under the jurisdiction of the EPA.

RESPONSE: It is the State's goal to cleanup and convert all brownfields to productive reuse, and although the QUANTA site may be undergoing remediation for several more years, Edgewater may wish to consider possible reuses and how they might help meet its long-term affordable housing needs.

COMMENT: There should be a straightforward way for a town to amend the COAH plan when local details specified by the State in the plan are found to be incorrect.

RESPONSE: N.J.A.C. 5:96-14.2 outlines the requirements for an amendment.

COMMENT: Comment on Jobs Impact: This summary should be removed because it inaccurately describes growth as anticipated. Again, not all communities anticipate growth and many plan not to grow, in order to maintain their citizens' quality of life. This should be reflected as an option towns may wish to explore instead of mandating more growth in every town.

RESPONSE: The Appellate Division decision states that COAH may not allow a municipality to avoid its affordable housing obligation by deciding not to grow. It is the Council's intention through growth share to capture affordable housing opportunities as market-rate growth occurs. This offers the best opportunity not to lose affordable housing opportunities where market-rate growth is occurring.

COMMENT: The commenter objects to relaxing environmental standards in order to build housing units on environmentally critical areas as defined in our municipality's land use ordinances ("areas or features which are of significant environmental value, including but not limited to: stream corridors; natural heritage priority sites; habitat of endangered or threatened species; large areas of contiguous open space or upland forest; steep slopes; and well head protection and groundwater recharge areas.") Towns should have a mechanism for negotiating affordable housing goals if it at first appears that the only way to accomplish the initial proposed goals is to build on environmentally sensitive land.

RESPONSE: The Council does not encourage the relaxing of environmental standards in order to build affordable housing units on environmentally critical areas. Sites designated to produce affordable housing must be available, approvable, developable and suitable pursuant to the criteria provided in N.J.A.C. 5:97-3.13. The site must be in compliance with the rules of all agencies with jurisdiction over the site.

COMMENT: There are substantial inconsistencies between two State agencies -the Highlands Council and the Council on Affordable Housing - as they attempt to fulfill their respective legislative mandates. Affordable housing can and must be provided in a manner that respects the legislative mandates of other State agencies and departments, including mandates that are implemented through planning (for example, the Highlands Regional Master Plan (RMP)) as well as those that are enacted through direct regulatory measures (for example, DEP rules). The proposed COAH rule does not sufficiently recognize and acknowledge the authority due the Highlands Water Protection and Planning Council and the Highlands Regional Master Plan in both the Preservation Area and the Planning Area. The Highlands Regional Master Plan must be placed on a par with the regional plans of the Pinelands Commission and the N.J. Meadowlands Commission. The COAH rule does not sufficiently incorporate and utilize the Highlands Council's publicly available data, analysis, policies and standards regarding the Highlands' environmentally sensitive lands and resources and its capacity for development and redevelopment in either Appendix F.1. "Analysis of Vacant Land in New Jersey And Its Capacity to Support Future Growth" or in the proposed rule itself. Harmonization of the COAH rule with the mandates, goals and policies of the Highlands Water Protection and Planning Act and appropriate recognition by COAH of the Highlands Regional Master Plan in the Planning Area must be addressed before the 88 Highlands municipalities should be expected to conform to affordable housing regulations.

RESPONSE: The Council notes that, as of the date of this rule adoption, the Highlands RMP is in draft form and has not been adopted. Upon adoption of the Highlands RMP, the Council will consider its impacts. COAH intends to work cooperatively with the Highlands Council to enter into a Memorandum of Understanding in the near future. Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, COAH's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The consultants are further updating this data to incorporate the estimated impacts of pending DEP Water Quality Management/Wastewater Management Plan Rule changes, using the same methodology as being employed to revise development capacity estimates across the rest of the state. These lower development capacity estimates will be used by COAH's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole.

COMMENT: Many commenters noted that the fiscal impact of these proposed regulations will be significant and the proposed regulations do not adequately address these increased costs. Specific concerns relating to fiscal impact include the following: -- methods to supply affordable housing without taxpayer subsidies are limited; -- the cost of compliance techniques, such as RCAs, has significantly increased; -- the development fee and payment-in-lieu of construction rules will not adequately fund the cost of the affordable housing generated by residential and non-residential development; -- adequate public facilities and infrastructure capacities are not available to support growth necessary to provide housing costs without prohibitive costs; -- state funding is currently limited to support affordable housing, and increased demand for such funding under the proposed regulations will make it unlikely for the Township to secure adequate financial assistance to offset even a small portion of the costs; and -- requiring such expenditures at taxpayer expense violates the Fair Housing Act prohibition against mandating the expenditure of "municipal revenues in order to provide low and moderate income housing" (N.J.S.A. 52:27D-310(d)) and the constitutional prohibition against unfunded mandates (N.J. Constitution, Article VIII, Section II, Paragraph 5).

RESPONSE: The Council does not mandate the expenditure of municipal revenues to provide low and moderate income housing. Under the Council's proposed rules, a municipality can choose from a variety of mechanisms in addressing its affordable housing obligation, some of which require little or no municipal subsidy. Inclusionary zoning, for example, would require the developer to provide the affordable housing on-site, or as a possible alternative, to provide a payment in lieu of construction. Neither scenario would require a municipal subsidy. Other mechanisms, such as an accessory apartment program and a market to affordable program require minimum subsidies of $ 20,000 and $ 25,000, respectively, which are significantly less than the payment-in-lieu amounts cited under N.J.A.C. 5:97-6.4(c). Although the cost of some compliance techniques has increased, the proposed rules increase the allowable percentages for both residential and non-residential development fees to assist municipalities in generating additional funding for affordable housing activities and for the infrastructure capacity necessary to support them. Development fees, unlike a payment-in-lieu, are not intended to represent the cost of constructing an affordable housing unit. They merely recognize the linkage between residential and non-residential development to the need for affordable housing. Municipalities are also encouraged to take advantage of existing state and federal funding sources such as the Balanced Housing Program, Low Income Housing Tax Credits, HOME, UHORP and MONI programs and to use affordable housing trust funds to leverage these public subsidies and/or funds from private lending institutions. Further, pending legislation envisions the collection of statewide development fees that would provide another potential source of funding.

COMMENT: The consequence of these new requirements will be to raise housing prices or stifle development. The cost to subsidize the building or the conversion to affordable units will surely be passed on to the consumer. The builder is not going to absorb it. So it would be passed on to the consumer and it will have an impact on development in New Jersey. The clear impact of COAH's rule proposal on inclusionary zoning is to increase the cost of constructing housing to the point that tens of thousands of households cannot afford newly constructed housing. The end result is to limit the potential pool of buyers to the point where a developer may choose not to build at all. The rules will provide economic incentives for towns to stop growth and will discourage economic development in the State. Municipalities that adopt the required plans will be at a competitive disadvantage to towns that ignore the process.

RESPONSE: The Council disagrees with the commenter that municipalities participating in the Council's process will be at a competitive disadvantage with other municipalities not participating in the Council's process. COAH provides a number of incentives to participate in its process. The Council believes that participation in its process fulfills the constitutional affordable housing obligation, provides the municipality with protection from litigation, provides flexible options for addressing the affordable housing obligation, creates the opportunity to engage in sound land use planning, provides opportunities for public participation and provides priority access to funding. Municipalities participating in the COAH process are also able to collect development fees from market rate development to meet their affordable housing obligations. In addition, the Council will propose an amendment to N.J.A.C. 5:97 in the near future to provide an incentive to municipalities that submitted petitions pursuant to the 2004 regulations to continue to participate in the COAH process. Specifically, municipalities will be eligible for a bonus credit for affordable units

approved between December 20, 2004 and June 2, 2008. The commenter should note that the Council's rules will be amended in the near future to provide additional incentives to developers to provide affordable housing through inclusionary zoning.

COMMENT: COAH has failed to recognize and acknowledge that this is a voluntary process and not a mandatory one. Municipalities must decide on their own to participate in the program. No developer or court can force a municipality into the process. Thus, in order for the administrative process to be successful, there must be a fair and reasonable standard and formula established. If COAH does not modify the proposed rules, municipalities will have no incentive to participate in the COAH program and the entire administrative process will collapse, leaving affordable housing to be addressed by the judiciary, which is the least capable of the branches of government to deal with affordable housing. Rest assured, however, that the judiciary will step into that void, as they did from the first *Mt. Laurel* case until the Fair Housing Act was adopted. It is submitted that if these regulations are adopted as proposed, without major modification, the process of affordable housing will be set back 30 years and New Jersey will revert to affordable housing policy being established by the judicial branch of government. That mechanism did not work before and it will not work now. Accordingly, COAH needs to assert itself and establish reasonable regulations that will encourage and not deter municipalities to participate in the program and to voluntarily step up to the proverbial plate and adopt regulations that will stimulate municipalities to actively and affirmatively participate in satisfying their affordable housing obligations.

RESPONSE: The Council believes that participation in its process fulfills the constitutional affordable housing obligation, provides the municipality with protection from litigation, provides flexible options for addressing the affordable housing obligation, creates the opportunity to engage in sound land use planning, provides opportunities for public participation and provides priority access to funding. Municipalities participating in the COAH process are also able to collect development fees from market rate development to meet their affordable housing obligations. In addition, the Council will propose an amendment to N.J.A.C. 5:97 in the near future to provide an incentive to municipalities that submitted petitions pursuant to the 2004 regulations to continue to participate in the COAH process. Specifically, municipalities will be eligible for a bonus credit for affordable units approved between December 20, 2004 and June 2, 2008. The Council received several hundred comments and will propose amendments in the near future to address several of the concerns raised by commenters. Hopefully, this will minimize any prolonged delays or litigation.

COMMENT: For the past three years Woolwich Township has worked tirelessly to implement a workable transfer of development rights (TDR) Program based on smart growth principles. Woolwich Township has recently received and reviewed the proposed Round 3 COAH rules. Simply stated, if Woolwich Township must apply the new rules to the TDR plan, most of the work performed over the past three years must be discarded and the process started anew. The reason for this is that, by statute, the TDR plan and its relevant components (that is, Land Use Plan, Stormwater Plan, Public Spaces Plan, Utility Services Plan, Capital Improvement Plan and the Draft TDR Ordinance) hinge on the Real Estate Market Analysis. It is our interpretation that the new COAH rules significantly impact the economics of the TDR plan and consequently trigger the need for a new Real Estate Market Analysis. It is easy to see the detrimental ripple effect. The market analysis informs every aspect of the plan because it dictates the value of TDR credits. This, in turn, informs the densities, which influence the land plan and capital improvements associated with the necessary infrastructure. Our professionals estimate that to revise the plan elements and to go through the public process will take 12 to 18 months and cost an additional $ 200,000 to $ 300,000 on top of the million-plus already spent on this TDR plan. Over the past three years, Woolwich Township acted in good faith. The commenter performed the Real Estate Market Analysis based on the COAH rules that existed at the time. Those rules required that 11.11 percent of new housing be affordable and that for every 25 jobs created one additional affordable house be provided. COAH should appreciate the necessity for TDR to succeed if there is going to be any hope of producing any more than the 250 affordable units planned in the Weatherby project. The Township's TDR plan, as presently constituted and on file with the Office of Smart Growth, creates a realistic opportunity for 413 affordable housing units (3,719 total housing units multiplied by .1111) in the Towns Center Area of the Township. This compares favorably to the 391 unit growth share obligation attributable to the Town Center under the proposed regulations ([1,374 housing units multiplied by .20] plus

[1,851 new jobs divided by 16]). Moreover, TDR ensures that developers required to produce affordable housing realize a density bonus or other compensatory benefit. Therefore, it is essential from an affordable housing perspective alone that COAH facilitate, not undermine, TDR and effort to encourage Smart Growth principles in Woolwich Township and throughout the State. Other factors render the importance of preserving TDR even more apparent. As noted, both the State and the Township have spent an enormous amount of time and money to work together to plan in this innovative new way. Furthermore, consistent with the emphasis on preserving environmentally sensitive lands in the Fair Housing Act, the State Planning Act and *Mount Laurel II*, TDR creatively and effectively promotes this laudable objective as well. For all these reasons, the commenter implores the State to assist us in our efforts to plan our community through TDR and the principles of smart growth, with the encouragement of the New Jersey Department of Environmental Protection and the State Planning Commission. Deference to these agencies is particularly appropriate where, as here, such deference will facilitate the production of over 400 affordable units. Therefore, its seems practical to request that the State consider maintaining Woolwich Township's affordable housing obligation at 11.11 percent for new housing and 1:25 jobs for commercial development for the following reasons:

A. Clearly, as the goal is to provide affordable housing within the Township, the currently submitted plan provides the optimal number of units to be built as opposed the other aforementioned alternatives. This presently submitted TDR plan works and is reasonable. The Woolwich TDR plan is so unique that there is really no risk of setting a negative precedent for other municipalities looking to participate under the TDR statute. B. To go back now and open the plan up in such a major fashion as would be required under the new COAH Regulations would be devastating. Between the cost and the impact on local policies, the idea of TDR in Woolwich will fail. C. The practice of smart growth policy is expensive and requires planning for the long-term. The TDR statute mandates that the municipality look ahead twenty years in its planning. For this type of planning to be of value and utilized by other municipalities, the process must be predictable and the rules governing the planning process must be protected from change during the planning and implementation phases. Woolwich Township has made significant investments with the help of the County and the State and believes it has a reasonable expectation that municipalities will not have to recalculate the plans at an extensive cost to local taxpayers over and over again.

RESPONSE: The commenter should note that the FHA and the proposed rules create a voluntary process. Municipalities that choose to participate in the Council's process are required to provide a realistic opportunity to meet the required affordable housing resulting from the growth share projections. The municipality is responsible for submitting a plan that meets its overall affordable housing obligation, as set forth in N.J.A.C. 5:97-2.4.

COMMENT: Because of conflicting regulations in various State departments, COAH rules seem to require building in environmentally sensitive areas. The commenter objects to relaxing environmental standards in order to build housing units on environmentally critical areas. The commenter states that tougher environmental protection standards should not be altered in the name of bolstering New Jersey's affordable housing effort.

RESPONSE: COAH, its consultants and representatives from the Office of Smart Growth and Department of Environmental Protection met in May 2007 to discuss potential sources of data that were available for the vacant land study and to identify all recently adopted or pending land use and environmental regulations that would be used as constraints on future development. Lands that were considered natural heritage priority sites, habitat for threatened and endangered species, steep slopes, undeveloped and unconstrained privately owned open space and forests, and steep slopes were all considered to be outside of these rules except where specifically made part of the Highlands Act.

COMMENT: Please provide us with any evidence available (a) that growth share is economically feasible for municipalities to meet in cooperation with developers; (b) whether a greater ratio (market rate to affordable) would in fact result in the construction of a greater number of affordable units; (c) and that the compensatory benefits will adequately off-set the higher cost imposed on developers as a result of a higher ratio (market rate to affordable), the increase in development fees for new construction and/or payments in-lieu of construction associated with both residential and non-residential development? In addition, please provide us with any detailed analysis COAH has undertaken, which demonstrates that the greater burdens placed on municipalities and residential and non-residential

developers to meet affordable housing obligations under the proposed rules will (a) not have a chilling effect on all development opportunities within the Borough, whether market-rate or affordable; and (b) in the event the proposed rules do indeed have a chilling effect on development as a whole, how will it be financially feasible for the Borough to meet its affordable housing obligations without imposing a significant additional tax burden on the Borough's residents, or having a negative fiscal impact on the municipal budget?

RESPONSE: Appendix F in the rules includes a significant body of evidence addressing economic feasibility and affordable housing set-aside ratios. Two reports have been provided with the rules. The first report, entitled "Compensatory Benefits To Developers For Provision Of Affordable Housing," provides detailed information on financial feasibility. The second report, entitled "Inclusionary Housing: Lessons from the National Experience," discusses national observations on the relationship between affordable housing set-aside ratios and actual production. The Council believes that carefully crafted fair share plans can be designed to have little or no impact on tax burdens. Increasing density is perhaps the single most significant tool that municipalities have available to both maximize affordable housing production and ensure efficient and compact land uses while simultaneously minimizing or even eliminating the need for local, state and federal subsidization. However, it is municipal land use decision making that dictates the extent to which increased density will be used as the valuable tool that it can be. The proposed rules called for a density increase of one market-rate unit for every affordable unit that was provided on site. This standard was set as a minimum to determine financial feasibility in consideration of the opinion taken by the court in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1, *certif. denied*, 192 *N.J.* 71 (2007) regarding the need for compensatory benefits. However, this minimum standard may not be sufficient to meet the high demand for affordable housing opportunities and the rule will be the subject of a future amendment wherein the Council will consider increased minimum standards to require density bonuses that reflect minimum presumptive densities for inclusionary zones based on SDRP Planning Areas and make it clear that different zones within each municipality may have different density increase and set-aside requirements provided they are applied uniformly throughout each zoning district.

COMMENT: The Smart Growth Impact statement should be changed to acknowledge that the proposed rules encourage smart growth, but lack any accountability mechanisms to ensure it, and in fact may have the unintended consequences of inhibiting growth in the right places at the right densities while allowing sprawl to continue unabated.

RESPONSE: The Council disagrees with the commenter. N.J.A.C. 5:97-3.13 addresses the commenter's concern with regard to consistency with the SDRP. This section is headed, "Site suitability criteria and conformance with the State Development and Redevelopment Plan". Subsection (b) mandates that affordable sites conform to the SDRP as it states: "(b) Sites designated to produce affordable housing shall conform to the State Development and Redevelopment Plan and shall be in compliance with the rules and regulations of all agencies with jurisdiction over the site. . ." The regulations go on to include standards that are "smart growth" enabling, for example, strongly encouraging development in sewer service areas, requiring OSG sign off in certain conditions and requiring adherence to regional planning and Statewide regulatory programs. COAH also takes the position that communities can and will make every effort to plan their communities in conformance with well conceived Master Plans approved with smart growth oriented goals and objectives.

COMMENT: Of note is the need to map the location of jobs in the State, and establish priority areas for housing development that result in the fewest vehicle miles traveled for work as the most appropriate locations for all housing - market-rate housing as well as affordable housing. In the absence of sound planning principles providing the basis for housing policy planning, the COAH Third Round process is doomed to failure when viewed over the long-term. Notwithstanding this as a fundamental planning principle, COAH should consider the appropriateness of requiring municipalities to locate affordable housing away from jobs at a time of unprecedented costs for energy and transportation.

RESPONSE: The proposed rules require that a municipality provide affordable housing in proportion to non-residential construction generated within the municipality, therefore encouraging affordable housing near job

growth.

COMMENT: Without the threat of a builder's remedy or a mandatory legal requirement to zone for affordable housing, accompanied by adequate density bonuses, little or no new affordable housing will be built in a state that is burdened with costly development regulations, high taxes, inadequate infrastructure, declining job growth and slowing population growth.

RESPONSE: This comment is outside the scope of the Council's jurisdiction.

COMMENT: The commenter supports a new, dedicated source of funding that will take the place of RCA funds in urban municipalities.

RESPONSE: This comment is outside of the scope of this rule proposal.

COMMENT: The regulations create significant financial incentives for municipalities to stop and limit growth to every extent possible.

RESPONSE: The Council disagrees with the commenter. The FHA and the Council's rules clearly provide an incentive for municipalities to comply by providing them protection from exclusionary zoning lawsuits. The proposed rules provide flexibility and a variety of options to enable municipalities to meet their constitutional affordable housing obligations, which the Council believes creates an incentive for municipalities to participate in its process.

COMMENT: NJDEP nitrate dilution calculations indicate that areas outside of the sanitary sewer service area cannot support any development of sufficient density to support affordable housing creation.

RESPONSE: The Council's rules and projections will be amended in the near future to take into account the adopted DEP Water Quality Management Planning Rules (N.J.A.C. 7:15). Further, the Council recognizes that an extension to a sewer service area is not possible for some locations of the State. In these cases, septic systems may be possible in accordance with DEP's rules. The zoning section of the Council's rules will be amended in the near future to provide standards for affordable housing development in areas served by septic systems. In addition, DEP has granted more than 100 permits for small and innovative technology wastewater treatment plants and is actively working with the Pinelands Commission to test the use of individual innovative septic treatment units on one acre residential parcels. Where there is currently no sewer or septic possibilities, the rules will be amended to allow a durational adjustment for sites addressing the growth share obligation. In the case of a durational adjustment, the Council will still require the site(s) to be zoned for inclusionary development pursuant to N.J.A.C. 5:97-6.4. However, the commenter should note that municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, a market-to-affordable program or reconstruction programs.

COMMENT: The regulations seem to be losing sight of the concept that the provision of affordable housing is a "community" obligation, that is, the community, including existing residents and businesses, should be helping house its own. This means that the community, including new developers as well as existing commercial and residential owners, should participate in a meaningful manner. The obligation should not fall wholly on just new entrants to the community. This position does not preclude growth share but reflects the original conception of an obligation to provide housing.

RESPONSE: The Council believes that a coalition of all stakeholders in a community can provide the guidance needed to prepare a plan for affordable housing that meets the local housing obligation and the planning goals and objectives. The fair share obligation consists of three distinct components: the prior round new construction obligation, the rehabilitation obligation and the growth share obligation.

COMMENT: COAH seems to have assumed that the Appellate Division opinion of January, 2007, requires it to use projections rather than actual growth. It did not. The Court expressed concern that there might not be enough land available to meet the projected need, that the 1:8 and 1:25 growth share ratios might not produce enough housing to

meet the need, and that municipalities might under-project their own growth to shift fair share compliance to other municipalities. The Court did not, however, mandate COAH's new approach. Rather, it observed that if there was a mismatch, either the ratios would have to be changed or a new allocation methodology devised. In its current proposal, COAH has responded to these comments by including an elaborate study of vacant, developable land, which it contends demonstrates that there is enough capacity to accommodate the projected need, and it has also significantly changed the growth ratios, to 1:5 and 1:16, which will produce a great deal more housing if conscientiously enforced. The Appellate Division notwithstanding, the land capacity study is of dubious relevance, because there is an ongoing debate in New Jersey about the impact of environmental protection regulations on the amount and location of buildable land. The only honest answer is unknown, because it depends on policy decisions yet to be made about the balance to be struck between growth and no-growth. The change in the growth ratios is very important, however, because the new ratios represent a fair estimate of the amount of lower income housing that can be produced through regulation of the private sector. If this point is accepted, then it doesn't really matter what the actual land capacity is; at a 20 percent growth ratio, we will be doing all that it is economically realistic to demand.

RESPONSE: COAH's consultants have obtained additional spatial data from DEP with regard to stream buffers associated with the recently adopted Flood Hazard Area Control Act and has completed it updating of the vacant land development capacity to fully consider the pending Water Quality Management Planning Rule changes that will impact sewer service areas and septic densities. The revised results will be made public with adoption of the Final Third Round Rules by COAH in early May. Going forward, the Council intends to work with other State agencies to ensure a cohesive State policy that takes into consideration all of our respective missions.

COMMENT: The commenter takes note of "build out" figures prepared by the Monmouth County Planning Board staff. Information, which is dated March 2005, identifies acres of developable land based upon an analysis of 1995 data. The County projection for Neptune Township indicated that in 1995 there were 850 acres of developable land. A significant amount of acreage identified by Monmouth County was been developed between 1995 and the date of the COAH analysis. In comparison, the COAH vacant land analysis determined 609 acres of developed land in 2002. Therefore, the Monmouth County build out studies for Neptune Township would appear to differ on amount of vacant developable lands in Neptune.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture and Department of Environmental Protection (NJDEP). One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this data in the future.

COMMENT: Part of the past new construction credit previously approved by COAH is now being eliminated, due to new requirements on unit sizes, rents and sales prices of built affordable units. Credit for past rehabilitation is now completely eliminated requiring towns to seek additional units to rehabilitate. In addition, development fees could no longer be used for Regional Contribution Agreements. Adding a new requirement for new affordable housing without consideration of existing land availability is arbitrary and capricious. The proposed new housing bill will have a negative effect on towns, which, in good faith, met all the past mandated COAH requirements, only to now see our past credits being eliminated.

RESPONSE: The commenter is incorrect. Credits for affordable units built on or after April 1, 1980, corresponding bonus credits for built units, units transferred to another municipality within the housing region pursuant to the terms of an RCA, and units that were rehabilitated subsequent to April 1, 2000 may all be used to address a municipality's affordable housing obligation, pursuant to the criteria in N.J.A.C. 5:97-4. Credit is given for rehabilitation activity April

1, 2000. The rehabilitation obligation was recalculated for every municipality based on the 2000 Census. Development fees can be used to fund RCAs.

COMMENT: You have two agencies in the State of New Jersey that are going in different directions. You have the New Jersey DEP looking to increase size of the lots. You can't build an affordable house on five-acre zoning.

RESPONSE: The rules will be amended in the near future to require clustering, lot-size averaging and/or attached housing types for inclusionary zoning outside of sewer service areas.

COMMENT: Who is responsible for keeping COAH units affordable, specifically regarding rapidly increasing association fees? The commenter lives in half the space, does not have a garage or the same services as the market rate unit owners, but pays exactly the same association fees as the market rate unit owners.

RESPONSE: Proposed N.J.A.C. 5:97-6.4(g) requires that zoning for inclusionary developments provides for the same community amenities as those provided to market rate units. The commenter should note that association fees are typically based on percentage ownership, which is tied to unit type. As such, townhouse and condominium style units normally pay different association fees based on the difference in size of the units. The Council is happy to work with condominium associations and affordable unit owners to help remedy problems that may come about as a result of disproportionate fees, and has done so in the past. The commenter should, however, note that the rule that requires affordable unit owners to pay the same fees as market rate owners is set forth in the Uniform Housing Affordability Controls at N.J.A.C. 5:80-26.6, and is therefore outside the scope of this rule proposal.

COMMENT: Will COAH help fund the preparation for the second growth share plan?

RESPONSE: On March 25, 2008, the Council passed a resolution granting municipalities with pending petitions a waiver from N.J.A.C. 5:97-6.2(c) for municipalities with COAH approved development fees and an established housing trust fund account to allow the expenditure of housing trust funds prior to the grant of certification and/or approval of a spending plan, on the cost of developing a revised Housing Element and Fair Share Plan in accordance with the Council's proposed third round rules.

COMMENT: By including commercial development in the formula for affordable housing mandates, you'll double our small population and strain our infrastructure well beyond capacity. Please make allowances for small rural towns to function while building just a manageable amount of homes.

RESPONSE: Municipalities have a number of mechanisms available to them in meeting their affordable housing obligations. One such mechanism is the affordable housing partnership program, set forth at N.J.A.C. 5:97-6.13, which allows two or more municipalities to work together to build low and moderate income housing units. This program will be useful to small municipalities with limited infrastructure. Additionally, COAH's consultants have obtained additional spatial data from DEP with regard to stream buffers associated with the recently adopted Flood hazard Area Control Act and has completed it updating of the vacant land development capacity to fully consider the pending Water Quality Management Planning Rule changes that will impact sewer service areas and septic densities. The revised results will be made public with adoption of the rules in early May.

COMMENT: Municipalities should be encouraged to address affordable housing obligations through cluster and center based zoning and infill. Where appropriate, the rules should mandate density requirements within sewer service areas and clustering in areas outside sewer service areas. Fully 40 percent of all land disturbance in New Jersey occurs outside of smart growth areas and 37 percent of that, or 15 percent of all land disturbance, supports large lot single family housing development. Maximizing opportunities for compact development with existing infrastructure results in powerful, positive overall results that include faster regulatory approvals, less cost, more intact communities with a higher quality of life, fewer environmental and natural resource impacts and a greater contribution to economic growth.

RESPONSE: The Council appreciates the commenter's suggestion. The Council believes that it is the municipality's

responsibility to determine appropriate affordable housing opportunities in its master planning process. The rules will be amended in the near future to provide incentives affordable housing in smart growth areas and redevelopment areas. Municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction through inclusionary zoning such as accessory apartment programs, market to affordable programs, redevelopment, regional contribution agreements and municipally sponsored programs. The rules include an option for a municipality to phase certain components of its plan based on the feasibility of the proposed mechanisms. The Council would like to point out that the RCA program is voluntary. The Council believes that it is the municipality's responsibility to determine appropriate affordable housing opportunities in its master plan. The Council disagrees with the premise that the implementation of a sound comprehensive plan for a community which includes affordable housing will cause environmental degradation. The Council intends to continue working cooperatively with other State agencies and to provide clear direction to municipalities on affordable housing policy goals. The Council currently has memoranda of understanding with the State Planning Commission, the Pinelands, the Meadowlands, and the N.J. Department of Environmental Protection, all of which the Council intends to update and expand. In addition, the Council intends to enter into an MOU with the Highlands Council in the near future. In accordance with the site suitability provisions at N.J.A.C. 5:97-3.13, the Council reviews all sites designated to produce affordable housing for consistency with the State Development and Redevelopment Plan. The Council also encourages center-based development and other forms of compact development. In keeping with smart growth objectives, the rules will be amended in the near future to provide bonuses for affordable housing within Transit Oriented Developments and redevelopment areas. The consultants have been working with DEP to incorporate additional information with regard to increasing the size of certain stream buffers and refining where development may be permitted within floodplain areas, both of which are regulated by the recently adopted Flood Hazard Control Act. In addition, they are updating the vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rule changes. In a future amendment, the Council will strengthen its rule to require that clustering, lot size averaging and/or attached housing be permitted in inclusionary zones.

COMMENT: The comment period ending on March 22, 2008 does not provide adequate time for comments to be received, reviewed and the rules revised by COAH prior to the June 2, 2008 deadline for adoption as set forth by the Superior Court. Thus, the review period is provided for form only.

RESPONSE: Council has complied with all rulemaking requirements set forth in the Administrative Procedures Act (APA) and has provided a 60-day comment period and six public hearings for the public to comment. The comments submitted by the public were thoroughly considered and taken into account by the Council. The Council will be proposing amendments in the near future to address the several hundred comments received.

COMMENT: The commenter objects to the basis of COAH's Third Round Rules due to the fact that our town is at risk of doubling our housing numbers if this formula stays in tact. Municipalities can not handle such a large jump in numbers without building new schools and having taxpayers pay for new fire departments, police forces, etc. Most people will not be able to afford to stay in town after these tax hikes take place, including the residents who now occupy affordable housing units in our town. We, as a town, have always fulfilled our COAH obligations and understand the need for these programs. If our municipality continues to fulfill its COAH obligations under the newly proposed Third Round Rules, you will bankrupt our town. We need to find a better balance.

RESPONSE: Providing affordable housing has been an ongoing constitutional obligation since the *Mount Laurel* decisions and the enactment of the FHA of 1985. Affordable housing obligation figures have been generated by the Council, pursuant to the FHA, for the periods 1987 to 1993, 1993 to 1999 and 1999 to 2018. During the 12-year period covered by the first two sets of the Council's rules, planning for affordable housing has become a routine process at the local level. The commenter should note that while certificates of occupancy generate the growth share obligation, this is distinct from the compliance mechanisms available to address that obligation. Municipalities have available a myriad of options for meeting their affordable housing obligations, of which inclusionary development is only one option. These options are described in N.J.A.C. 5:97-6. For instance, municipalities may undertake a municipally-sponsored construction project or an accessory apartment program. Municipalities may use development fees and payments in lieu,

among other mechanisms, to finance affordable housing production.

COMMENT: The only way affordable housing is going to get built is if you make it worth the while for developers to build it, because the government is not building enough affordable housing. If you leave developers screaming, they're not going to build affordable housing.

RESPONSE: The rules as adopted requires municipal zoning to provide a compensatory benefit in the form of one additional market rate unit for each affordable unit required. The Council believes the resulting increase in revenues is a sufficient incentive for developers to produce affordable housing. Additionally, the Department of Community Affairs and the New Jersey Housing and Mortgage Finance agency operate numerous programs that fund the construction of affordable housing developments. Additionally, the rules will be the subject of a future amendment wherein the Council will consider increased minimum standards to require density bonuses that reflect minimum presumptive densities for inclusionary zones based on SDRP Planning Areas and make it clear that different zones within each municipality may have different density increase and set-aside requirements provided they are applied uniformly throughout each zoning district.

COMMENT: Requiring one affordable unit among five residential units and one affordable unit per every 16 jobs is an improvement over the previously proposed rule. While it may be an improvement, the proposed rules place to great of an emphasis on inclusionary development as the appropriate mechanism for meeting the state goal of producing 115,000 affordable units while respecting environmental constraints. The commenter is significantly concerned that this new approach does not adequately encourage redevelopment in existing communities and downtown districts where transportation is readily available and existing sewer and water is most easily provided. The commenter supports actual growth-share but is greatly concerned that the proposed rules are a top down allocation of projected growth rather than promoting growth-share based on real growth.

RESPONSE: The commenter should note that the method of calculating the growth share obligation is distinct from the methods of compliance. The municipality is responsible for submitting a plan that meets its overall affordable housing obligation, as set forth in N.J.A.C. 5:97-2.4. Municipalities have a myriad of options to satisfy their obligation including those that do not require new inclusionary development such as accessory apartment programs, market to affordable programs, redevelopment, and municipally sponsored programs. In fact, the revised rules include redevelopment as a new mechanism to address the affordable housing obligation.

COMMENT: The COAH rules as proposed could allow developers to maximize profits at the expense of the town and could result in town lawsuits paid for by taxpayers.

RESPONSE: The Council disagrees with the commenter's position and is unaware of any evidence to support this claim. The commenter should note that the FHA and the proposed rules create a voluntary process. Municipalities that choose to participate in the Council's process are required to provide a realistic opportunity to meet the required affordable housing resulting from the growth share projections. The Council's rules clearly provide an incentive for municipalities to comply by providing them protection from exclusionary zoning lawsuits. The proposed rules provide flexibility and a variety of options to enable municipalities to meet their constitutional affordable housing obligations, which the Council believes creates an incentive for municipalities to participate in its process. The proposed rules provide flexibility and a variety of options to enable municipalities to meet their constitutional affordable housing obligations, which the Council believes creates an incentive for municipalities to participate in its process.

COMMENT: Comment on Smart Growth Impact: This summary should also be removed because these proposed regulations are not environmentally and culturally sensitive and do not encourage smart growth under any mechanism. They rely heavily on inclusionary housing, flawed projections and assumptions of growth, and placing affordable units in floodplains without adequate access to parks and recreational facilities. The proposed rules force growth on all towns instead of encouraging and providing incentives for smart growth through redevelopment and rehabilitation. The proposed regulations do not encourage smart growth or balanced land uses, including open space and park development

as well as transit corridor development, and the benefits these services provide to all residents, especially residents who qualify for affordable housing. The plan also does not recognize that many towns have no capacity for increased growth but are still expected to meet affordable unit targets. There is no component in these proposed regulations that encourages smart growth. Any mention of "smart growth" must be eliminated because the proposed N.J.A.C. 5:97 proposes to provide much of the necessary affordable housing obligations through inclusionary development. This will require almost 600,000 units to meet the state's goal of 115,000 units. The commenter outright opposes this policy because it is not smart growth nor is it even capacity based growth. Any mention of smart growth is hiding the true objectives of these rules.

RESPONSE: The commenter should note that sites proposed for inclusion in the Fair Share Plan should be environmentally suitable and in accordance with sound land use planning. All sites are subject to the expanded site suitability criteria described in N.J.A.C. 5:97-3.13(b)3 through 5. The portions of these sites slated for development must be free of wetlands, category one waterways, and steep slopes in excess of 15 percent if regulated at the local level. Historic sites will be protected from development. In addition, the Council will adhere to the policies of the DEP, New Jersey Meadowlands Commission, the Highlands Water Protection and Planning Council, and Pinelands Commission when considering the suitability of sites.

COMMENT: Since COAH has given municipalities in PA 4 and PA 5 with no public water and sewer a growth share obligation and these municipalities have minimum new construction activity and minimum development fees, COAH should present specific compliance options for municipalities in PA 4 and PA 5 with no public water and sewer and minimal fees.

RESPONSE: The Council has provided many types of mechanisms to provide affordable housing. Most of the mechanisms provided in N.J.A.C. 5:97-6 do not require new construction.

COMMENT: The proposed regulations are inconsistent the New Jersey State Development and Redevelopment Plan (State Plan), the Highlands Regional Master Plan (Highlands Plan), the Pinelands Comprehensive Management Plan (Pinelands Plan), and the Department of Environmental Protection (DEP) In the opinion of the agency, are the growth projections Statewide and at the municipal level reflective and consistent with the State Plan, Highlands Plan, Pinelands Plan and DEP's regulations? If so, please explain how they are consistent and how the State Plan, Highlands Plan, Pinelands Plan and DEP's regulations were used to project growth? Has COAH submitted the regulations to the Office of Smart Growth, the State Planning Commission, the Highlands Council, the Pinelands Commission and DEP for a determination of consistency with the above plans and DEP's regulations? If so, please describe the opinion of the Office of Smart Growth, State Planning Commission, the Highlands Council, the Pinelands Commission and DEP on the consistency of the proposed regulations with the above plans and DEP's regulations?

RESPONSE: The Highlands Council, DEP and the Pinelands all submitted comments to COAH's proposed regulations, all of which were forwarded to the commenter. COAH has and will continue to meet with the respective agencies named by the commenter to continue the dialogue of how we can work together to effectuate our respective missions. There is a constitutional obligation to create affordable housing in this state that continues to exist notwithstanding regulatory barriers. That being said, the Council offers a variety of options to the towns, such as 100 percent affordable municipal construction, market to affordable, accessory apartments, etc., that municipalities can employ to address their obligation. Members of the Council and staff have met with the State Planning Commission and will continue to do so to ensure consistency with the Council's processes while the State Plan is being updated. In addition, the Council currently has memoranda of understanding with the State Planning Commission, the Pinelands, the Meadowlands, and the N.J. Department of Environmental Protection, all of which the Council intends to update and expand. In addition, the Council intends to enter into an MOU with the Highlands Council in the near future.

COMMENT: COAH costs should be exempt from municipal budget caps. The costs of a COAH application are significant. Over 200 municipalities already submitted third round plans, and will now be expected to do so again. While most municipalities use their affordable housing trust funds to cover administrative costs, these regulations will

be add more costs to local governments. There is no doubt that ultimately the burden will be borne by property taxpayers. The Council should request of the Local Finance Board an appropriations and levy cap exception for costs associated with a COAH application.

RESPONSE: The commenter should note the request is already permitted pursuant to N.J.S.A. 52:27D-327. The cost associated with the preparation and implementation of a municipal Housing Element and Fair Share plan pursuant to the FHA is considered a mandated expenditure exempt from the limitations on final appropriations imposed pursuant to P.L. 1976, c. 68 (N.J.S.A. 40A:4-45.1 et seq.).

N.J.A.C. 5:97-1

COMMENT: The Council's definition for the word "reconstruction" in N.J.A.C. 5:97-1.1 is such that a developer builds a new office building and pays a three percent development fee after it's built. If the developer then gets a new tenant five years later for a thousand square feet in that building, maybe it's a 25,000 square foot building. Under the definition, if the work done within that thousand square feet requires that that space be vacated while the work is ongoing, the fee becomes payable again.

RESPONSE: Under the definition of "reconstruction" and the applicability of development fees, any development fee assessed would be only for the portion of the building on which the work was done. Further, if the work completed on that section of the building consisted of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings a development fee would not be assessed. Further, asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted.

COMMENT: The phrase relatively low-density development should be defined.

RESPONSE: The definition of "relatively low density development" depends on the specific nature of the property, as well as many other factors, and therefore must be reviewed on a case-by-case basis.

COMMENT: The rules refer to a municipality's need to preserve scarce resources, but they are not defined. Is it water, land, sewer? Is it up to COAH staff to judge that when the plans come in?

RESPONSE: Under *Hills Dev. Co. v. Bernards Tp. in Somerset Cty.*, 103 *N.J.* 1 (1986), the Supreme Court upheld the validity of the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. The Court concluded that the Council has the power to require, as a condition of its exercise of jurisdiction on an application for substantive certification, that the applying municipality take appropriate measures to preserve "scarce resources," namely, those resources that will probably be essential to the satisfaction of its *Mount Laurel* obligation. *Id.* at 61. The Council considers water, land and sewer all to be potentially scarce resources.

N.J.A.C. 5:97-1.1(b)

COMMENT: Many communities do not have substantial amounts of vacant land and access to infrastructure. Those with vacant land often times lack infrastructure. The Statewide affordable housing should not be proportionally allocated to municipalities that do not have substantial amounts of vacant land or access to adequate infrastructure; this is contrary to environmental goals and the smart growth initiative. Political goals should not outweigh, nor influence sound planning practice. How can, and should, municipalities in PA 4, 4B and 5 provide such an opportunity? Additionally, affordable housing goals, if not appropriately balanced, will be disproportionately located in urban centers where growth can be accommodated. More must be done to ensure the affordability of existing housing stock in addition to new units developed to ensure that existing units that can qualify, do; and are protected as such.

RESPONSE: The growth share methodology employs the basic tenet that where growth occurs, that growth can and should provide opportunities for households of all incomes. The Council believes that sound planning practice is precisely the tool that can allow this to occur. When using inclusionary zoning as an affordable housing delivery option,

compact forms of development in areas with existing or planned infrastructure is preferred. Where this is not possible, alternative design principles could serve as a viable approach. In a future amendment, the Council will strengthen its rule to require that clustering, lot size averaging and/or attached housing be permitted in inclusionary zones as necessary to ensure realistic opportunity. This is particularly important in PA 4, 4B and 5 where reductions in site improvement costs and careful water quality management planning can represent significant cost reductions to aid in the production of affordable housing. Additionally, where local decision makers determine that inclusionary zoning is not a viable approach to providing affordable housing, municipalities have a myriad of options available for meeting their affordable housing obligations, of which inclusionary development is only one option. Additional options that do not rely on new inclusionary development include the market to affordable program which allows a buying down of existing market-rate units, reconstruction of existing units, municipally sponsored rental programs and accessory apartment programs. Programs available to municipalities are detailed in N.J.A.C. 5:97-6.6 through 6.16.

COMMENT: The underlying premise of the rules is incorrect in that it establishes an artificial housing need that is not based upon the critical factor that ultimately determines that housing need - the zoning ordinances of 566 municipalities in the State. Prospective housing need is based upon population migration into the State as a result of housing being available or employment opportunities being created. Both of those triggers are regulated by the 566 zoning ordinances in effect in the municipalities of this State. In simplified form, if those zoning ordinances created the ability to construct a finite number of new residential units and did not allow for any non-residential development, the housing population would only increase to the extent that housing were available for them. People who migrate to the State need someplace to live. A projection of housing growth without regard to the zoning ordinances within the State is fatally flawed. The projections utilized by COAH represent the anticipated growth based upon a scenario where all vacant developable land in the State is to be developed. When the projections of growth produced as a result of that premise are then mandated numbers that municipalities must accommodate, the growth is not market driven but artificially created. Under COAH's mechanism, the growth has nothing to do with determinations that municipalities make, but instead determinations which are made as part of these rules and then relayed back as mandates to the municipalities to zone in a way that will produce that growth--a self-fulfilling prophecy. In summary, the projections produce the growth rather than the Master Plans and zoning ordinances for the 566 municipalities in the State determine how and where growth will take place.

RESPONSE: In *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95, by the Council on Affordable Housing*, 390 *N.J.Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 72 (2007) the New Jersey Appellate Division stated that, "If municipalities with substantial amounts of vacant land and access to infrastructure can decide for themselves whether and how much to grow, it is highly likely that housing opportunity will fall far short of identified housing need." *Id.* at 56. Therefore, the Council's revised methodology utilizes independent municipal household and employment projections for planning purposes. The commenter should note that a municipality may address its constitutional obligation to provide affordable housing through many mechanisms, zoning being only one of them. The Council does not dictate how the obligation it met. The Council provides many additional mechanisms, which are set forth in N.J.A.C. 5:97-6.

N.J.A.C. 5:97-1.1(d)

COMMENT: COAH's conflation of job growth and non-residential growth or development is confusing and leads to endless debates on the accuracy of the number of jobs "created" by non-residential development, which does not "create' jobs, but rather provides space for workers to work. It's the space, that is, square feet of non-residential development, that is important and what COAH should be counting, exclusively. COAH should abandon calculating non-residential Growth Share based on numbers of jobs, and instead rely on non-residential Growth Share based on Growth Share factors expressed directly in terms of square feet of non-residential space per required affordable housing unit.

RESPONSE: The Council's methodology in Appendix A is based in part on a projection of employment growth between 2004 and 2018 using NJDLWD projections. Therefore, the Council believes that it is appropriate to measure

new or expanded square footage of non-residential space and relate such new construction and expansion to job creation.

N.J.A.C. 5:97-1.2(d)2

COMMENT: This rule provides all built or created units shall be evaluated under N.J.A.C. 5:94-4, Credits. The provision is too narrow, as the provisions of N.J.A.C. 5:94-4 are narrowly stated. The rule should be that units built or credited will provide a credit, whether they satisfy N.J.A.C. 5:94-4 or not. COAH should not seek to deny credits to municipalities for units which were built or created as part of any plan of compliance. COAH should provide greater flexibility than it has in the past in recognizing credits for past housing activity.

RESPONSE: It is not the intent of the Council to require a municipality that received credit for built units as part of a prior round substantive certification to demonstrate again that the built affordable units meet the criteria in this subchapter. However, any new units created since substantive certification will be required to comply with the criteria in N.J.A.C. 5:97-4 depending on the rules that were in effect at the time.

N.J.A.C. 5:97-1.4

COMMENT: A definition for "Wastewater Management Plan" should be added as follows: "'Wastewater Management Plan' shall be as defined in N.J.A.C. 7:15-1, et seq."

RESPONSE: The Council will address the commenter's concerns by amending the rule in the future to add definitions for "water capacity" and "sewer capacity," which will include a reference to wastewater management plans.

COMMENT: A definition for "manufactured home" should be added as follows: "'Manufactured home' shall be as defined in The Affordable Housing Act of 1983, P.L. 1983, c. 386, §7, N.J.S.A. 40:55D-102.c."

RESPONSE: A definition for "manufactured home" is not needed as the term is not used in the regulations as adopted. The Council will consider amendments in the future to address the unique concerns of the manufactured housing community.

COMMENT: "Deficient housing unit" - Does the definition of "deficient housing unit" include overcrowded units, as the calculation of the Rehabilitation Share in Appendix B includes overcrowded units built prior to 1950. If not, the definition should be amended to comport with the analysis in Appendix B.

RESPONSE: The Council believes that the definition of "deficient housing unit" in the rule is sufficient, as it sets forth the criteria to be used by municipalities in identifying such units. The terms "overcrowded unit" and "dilapidated unit" are used only in Appendix B, as part of the methodology, and therefore the Appendix appropriately defines those terms.

COMMENT: "Assisted living residence." Affordable assisted living units should be entitled to credit even if they do not offer a kitchenette. Many assisted living facilities do not offer kitchenettes because it is unnecessary; congregate dining facilities obviate the need for a kitchenette, and a kitchenette drives up the cost of housing.

RESPONSE: The definition provided in N.J.A.C. 5:97-1.4 is from the New Jersey Department of Health and Senior Services. To meet the requirements to be a licensed facility, all provisions must be met. The definition states the following, "'Assisted living residence' means a facility that is licensed by the Department to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed, to four or more adult persons unrelated to the proprietor. Apartment units offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette, and a lockable door on the unit entrance."

COMMENT: "Middle income housing" - This is a helpful addition to state housing policy, but it is confusing to

have two different definitions, with ceilings of 120 percent and 150 percent of median income. The definition should be capped at only 120 percent of median income.

RESPONSE: This definition has been deleted as the Council will not be adopting the tiered development fee approach at N.J.A.C. 5:97-6.4(c)5, which is the only place the term "middle income housing" is used in the rules.

COMMENT: "Designated centers" - At the moment, the Office of Smart Growth (OSG) is de-designating centers whose initial approval has expired, pending submission of documents toward Plan Endorsement (though they are not requiring full Plan Endorsement as a condition for redesignation). Will "designation" for COAH purposes continue even if a center has technically been de-designated? The problem is that municipal planning staff are busy enough with the new COAH rules not to be able to do the work necessary for redesignation.

RESPONSE: In the prior round rule, the Council required municipalities to identify an expanded center(s) or a new center(s) and submit the expanded or new center(s) to the State Planning Commission for designation if and only if the municipality was proposing new construction affordable housing sites in Planning Areas 4 or 5 and not in an existing center. Municipalities that conformed with the Council's terms of the previously granted certification will not be asked to again seek center designation through the plan endorsement process. However, previously zoned sites that remain undeveloped will be re-evaluated pursuant to N.J.A.C. 5:97-6.5. If the lack of center designation is determined to be a contributing factor to reasons why the site has not developed, the Council may seek a recommendation. The Council may seek a recommendation from the Executive Director of the Office of Smart Growth on the consistency of the site with sound planning principles and the goals, policies and objectives of the State Development and Redevelopment Plan.

COMMENT: "Age-restricted housing" - Paragraph 2 ("At least 80 percent of the units are occupied by one person that is 55 years or older") would seem to include within it paragraph 1 ("All the residents of the development are 62 years or older"), that is, any development that met 1 would also meet 2. The relationship between the two paragraph is not specified. Please clarify.

RESPONSE: The Council believes that the definition is clear respecting the commenter's concern. The "or" between paragraphs 2 and 3 indicates that it is at the developer's option whether the development is restricted to residents 62 years of age or older, or 55 years of age or older. If the development is one where residents must be 62 years of age or older, then all residents must be 62 years of age or older. If, however, the development requires residents to be 55 years of age or older, at any given time 20 percent of the units may be occupied by residents who are younger than 55 years of age. Paragraph 1 does not automatically meet the requirements of paragraph 2 or vice versa because paragraph 2 allows 20 percent of the residents to be younger than 55 years of age.

COMMENT: The definition for "development fee" is inappropriate. There is no common understanding of what "improvement" means. The commenter would argue that any development is actually destructive, thus the definition would fail to ever apply, except for the example of a town converting open space into a public park. This must be corrected to adequately reflect the reality that almost all new development pollutes our drinking water, leads to increased erosion, increased congestion on our roadways, and higher pollutant loadings in our soils and air.

RESPONSE: The Council believes that its use of the word "improvement" is consistent with the meaning of the word in the building community, meaning the building of or placement of a permanent structure on a piece of real estate or land.

COMMENT: The definition of "growth share" should be revised to clarify that residential development should not include development of a residential dwelling replacing a demolition. The definition could be revised to read ". . .one affordable housing unit for the increase of every four market-rate residential units. . ."

RESPONSE: The commenter's suggestion would not be consistent with the Council's growth share methodology, which considered replacement of housing units demolished to be part of the projected housing growth.

COMMENT: A definition for "development application" should be added and make clear that same includes applications for general development plan approvals and concept plan approvals in addition to applications for preliminary and final subdivision and site plan approval. The reason is that some municipalities take the position that they can delete and rezone prior cycle inclusionary sites that are identified in their Compliance Plans if the developer only applied for general development plan or concept plan review. This is inherently unfair and contrary to the intent of the Mount Laurel cases, the Fair Housing Act, and the Municipal Land Use Law.

RESPONSE: The rule will be amended in the near future to include a definition for development application.

COMMENT: The definition of "realistic opportunity" should include a requirement that the affordable housing in a Fair Share Plan actually meet at least one component of the housing need identified in Appendices A, B, and C to these rules. Affordable housing that does not respond to the need calculated does not provide a realistic opportunity.

RESPONSE: The commenter should note the phase "realistic opportunity for affordable housing" comes from the FHA. N.J.S.A. 52:27D-311(a) indicates that the municipal housing element shall contain an analysis demonstrating that it will provide a realistic opportunity for the provision of the fair share. Therefore, the Council believes the commenter's concerns are adequately addressed.

COMMENT: "Housing unit" - A standard definition of "housing unit" should be added, as COAH uses the term throughout the rules. The definition should follow and adopt the definition used by the U.S. Census Bureau: "A housing unit is a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied (or if vacant is intended for occupancy) as separate living quarters. Separate living quarters are those in which the occupants live and eat separately from other persons in the building and which have direct access from the outside of the building or through a common hall. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements." The commenter supports COAH's determination to abandon its 2004 definition of "housing unit," which asserted that a unit in an "alternative living arrangement," as previously defined by COAH, is a housing unit, which it is not according to the U.S. Census Bureau.

RESPONSE: The Council does not believe it is necessary to amend the rule by adding a definition of "housing unit" as suggested by the commenter. The Court, in its decision of *In Re Adoption of N.J.A.C. 5:94, and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007) upheld the Council's decision to include those living in group quarters in the need. In this regard, the methodology remains the same and there is no need to change it.

COMMENT: Does the phrase "access to" in the definition of "suitable site" mean that a site is currently served with infrastructure that is structurally adequate and has available capacity to construct the proposed affordable housing project? If so, sites that lack infrastructure capacity cannot be considered suitable. If not, any site could be offered as suitable by a developer, regardless of environmental or natural resource capacity limitations which can only be ascertained by an up-to-date Wastewater Management Plan. What proofs are required by the Council to determine that a project "can be developed consistent with the Residential Site Improvement Standards and the rules and regulations of all agencies with jurisdiction over the site"? Does the Council intend to assume that any project site, regardless of its size, scale or location "can be developed consistent" with the requisite standards? If the Residential Site Improvement Standards (RSIS) are specifically mentioned, should other regulations such as those at DEP including Water Quality Management Planning be referenced as well?

RESPONSE: Under the Council's proposed rules at N.J.A.C. 5:97-3.13(a), one of the criteria for evaluating site suitability is evidence that the site has access to water and sewer infrastructure with sufficient capacity and is consistent with the applicable area wide water quality management plan submitted to or under review by DEP. Sites within Planning Areas 1 or 2 or located within a designated center or located in an existing sewer service area are the preferred location for municipalities to address their fair share obligation. To clarify the intent of N.J.A.C. 5:97-3.13(a)3, a future

rule amendment will add definitions of "sewer capacity" and "water capacity," and the provision will be revised to reference them. The definitions recognize on-site facilities, thereby addressing situations in which municipalities must rely on development on septic systems. In a future amendment, the Council will strengthen its rule to require that clustering, lot size averaging and/or attached housing be permitted in inclusionary zones. With regard to the commenter's question regarding the RSIS, the Council has historically defined "approvable" to mean a site that may be developed in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site, that is, it is expected to be developed in a manner consistent with the RSIS and other applicable regulations. The rule does not state that the municipality must demonstrate compliance at the time of petition, but rather once it is developed it must be developed consistent with the RSIS, if applicable.

COMMENT: "Realistic opportunity" - Will COAH examine the "financial feasibility of each proposed mechanism" in every municipality, as implied by this definition?

RESPONSE: COAH requires municipalities under its jurisdiction to determine whether proposed affordable housing mechanisms provide a realistic opportunity for the creation of that mechanism within the period of substantive certification, and provide substantiation of this opportunity in its petition.

COMMENT: "Supportive and special needs housing" and "supportive shared living housing" - These are helpful additions to the COAH terminology and a welcome repeal of the prior term "alternative living arrangements." However, COAH should track closely the Census Bureau definitions of such terms, as this type of "housing" is classified by the Census Bureau as "group quarters," which is indeed the term COAH uses in Appendix A. Under the Census Bureau definitions, "households" live in "housing units" and individuals live in "group quarters." COAH should fully adopt this distinction and delete "or households" from these definitions.

RESPONSE: The Council's definitions for "supportive and special needs housing" and "supportive shared living housing" include permanent supportive housing as well as supportive shared living housing which credits by the bedroom. As a result, the Council uses both terms. In a future rule proposal, the definition for "supportive shared living housing" will be amended to no longer reference households, the definition for "supportive and special needs housing" will be amended to state that it can be either individuals or households, not both, and the definition for "permanent supportive housing" will be amended to only include households with individuals with special needs, not just households.

COMMENT: "Unmet need" - This is a helpful addition and COAH's more vigorous enforcement of satisfaction of the Prior Round unmet need is welcomed.

RESPONSE: The Council thanks the commenter for his support.

COMMENT: It is understood that the methodology incorporates the regional asset limit; however; it has to be revised so that this limit does not impact a senior citizen or a household moving into an age restricted unit in terms of their household's income eligibility. Many seniors today have no other assets, limited income, and need to sell their unencumbered homes to live off the equity. These households should not be penalized for not leveraging themselves at a point when they need the liquidity the most.

RESPONSE: The comment is in reference to the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, which are promulgated by the N.J. Housing and Mortgage Finance Agency, not COAH. The Council will forward the comments to the Agency, who may address the concerns in a future rule amendment.

COMMENT: "Planning Area" - COAH must take a more aggressive role with the Office of Smart Growth to assure that there are sufficient planning area and center designations within the State Plan to provide for the needed affordable housing under the growth share formula.

RESPONSE: The Council is dedicated to working with its sister agencies in furtherance of its constitutional

mandate to provide affordable housing to the low and moderate income residents of the state. The Council encourages municipalities to seek plan endorsement and center designation. Additionally, the Council is working on an updated MOU with OSG to further the policy coordination between the two agencies.

COMMENT: The definitions for "permanent supportive housing" and "supportive housing" must be clarified. The definitions conflict with the information contained in N.J.A.C. 5:97-6.10(a). Specifically, there is confusion between what constitutes supportive housing and what is considered "permanent" supportive housing. This distinction is important because the unit of credit is different for supportive housing and permanent supportive housing. Specificity is necessary for Plan preparation.

RESPONSE: The definitions for "permanent supportive housing" and "supportive shared living housing" will be revised in a future rule amendment to eliminate any confusion between the two definitions.

COMMENT: The definition of "family unit" needs to be clarified. This is an important definition as 50 percent of the Growth Share must be family units. The definition should clearly state housing types that are not family units. For example, the rules must clarify whether family units solely exclude age-restricted housing, or if supportive housing and permanent supportive housing also is excluded. The definitions in the draft rules are unclear.

RESPONSE: A family unit must be available to the general public and may not be restricted to any segment of the population. Therefore, age restricted units, supportive housing and permanent supportive housing may not be used to fulfill the family unit requirement.

COMMENT: The commenter applauds the Council for providing clear direction in the revised regulations as to the definition of credits. It is clear that prior round bonus credits are only awarded for built units.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The following definitions should be amended: "adjustment" - the definition should be amended to also include "or reduce the municipal growth share obligation"; "durational adjustment" - the definition should be amended to change "prior round affordable housing obligation" to "fair share obligation"; "realistic development potential" - the definition should be amended to change "prior round affordable housing obligation" to "fair share obligation"; "suitable site" - the definition should be amended to also include "free of encumbrances or other environmental constraints which would"; "unmet need" - the definition should be amended to change "prior round affordable housing obligation" to "fair share obligation"; and "vacant land adjustment" - the definition should be amended to change "prior round affordable housing obligation" to "fair share obligation".

RESPONSE: The current definition of "adjustment," which reduces a municipality's 2004 through 2018 household and employment projections, is accurate because a municipality may not seek an adjustment to reduce its growth share obligation, only its projection. The Council will be amending the definition of "durational adjustment" in a future rule proposal, so that it means a deferral of the prior round or projected growth share affordable housing obligation based on lack of infrastructure pursuant to N.J.A.C. 5:97-5.4. The Council believes that the definitions for "realistic development potential," "suitable site," "unmet need" and "vacant land adjustment" do not need to be changed as they accurately apply only to the prior round affordable housing obligation.

COMMENT: "Growth Share" - The definition of the non-residential component of Growth Share should be revised to delete references to newly created jobs, which are difficult for municipalities to count, and should instead refer exclusively to square feet of new non-residential development, which is easy to count and is reported to DCA by local construction officials.

RESPONSE: The Council's methodology in Appendix A is based in part on a projection of employment growth between 2004 and 2018 using NJDLWD projections. Therefore, the Council believes that it is appropriate to measure new or expanded square footage of non-residential space and relate such new construction and expansion to job

creation. The Council does not believe the change to the definition is necessary or consistent with the Council's methodology.

COMMENT: The Council should supplement the definition of "reconstruction" by adding: "reconstruction also includes the installation of a code-compliant manufactured home on a new or pre-existing manufactured home site."

RESPONSE: The Council appreciates the commenter's suggestion. As previously discussed, the Council will propose amendments in the future to address the unique concerns of the manufactured housing community.

COMMENT: Add: "'Agricultural development' means construction for the purposes of supporting common farmsite activities, including but not limited to: production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing." This definition is based upon the definition from the Agriculture Retention and Development Act.

RESPONSE: The Council does not believe it is necessary to include a definition for "agricultural development" as the term is not used anywhere in the rule.

COMMENT: The commenter recommends including a definition of vacant land. The definition should include land available for development, which is not in active use. There are references in the rules that are confusing agricultural land with vacant land.

RESPONSE: The Council does not believe that this change is necessary. Municipalities that seek an adjustment to their affordable housing obligation may remove agricultural lands not already preserved from the vacant land inventory, as these lands are considered as passive recreational lands. The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. If the land is already designated as passive or active recreation, these parcels may be removed from the vacant land inventory even if they are over the three percent cap. If additional sites are proposed for designation, these sites may only be excluded from the vacant land inventory if they are within the three percent caps for active and passive recreation lands respectively, for the whole municipality pursuant to 5:94-5.2(d)6 and 7. The municipality then has one year to purchase and limit these lands for active and passive recreation. Although the Council understands the necessity to preserve these lands, the Council is also concerned with the scarcity of land in the state. The percentage for active recreation is consistent with the Balanced Land Use guidelines in the New Jersey Statewide Comprehensive Outdoor Recreation Plan and the percentage for passive recreation is consistent with the Fair Housing Act (at N.J.S.A. 52:27D-310.2).

COMMENT: It appears that the growth share requirements will not be assessed against the actual residential and job growth that occurred between 1999 and 2004. This is completely unacceptable, given that a significant amount of residential construction occurred during this period. The regulations should adopt a simple and straight forward approach: the new growth share ratios should be applied retroactively to the actual number of units constructed within each municipality from 1999 to 2004. After subtraction of any affordable units actually built, the remainder should be added to the projected growth share requirement for the years 2004-2018 and become part of a municipality's total growth share obligation.

RESPONSE: The Council's approach regarding the starting point for the calculation of growth remains unchanged from the December 20, 2004 adopted third round rules and was not overturned by the Appellate Division in its 2007 decision. The methodology employed by the Council identifies need based on household formation from 1999 to 2018 and delivers this need based on a compressed delivery period from January 1, 2004 through December 31, 2018.

COMMENT: The commenter supports the increase from one unit for every 25 jobs to one for every 16, but contends that it does not go far enough. The methodology used to arrive at this figure (new or expanded non-residential construction) does not adequately capture the predominance of low-wage work (at least half of all current and projected

jobs pay wages below the real cost of living), nor does it reflect the increase in lower-wage employment attributable to existing, unexpanded facilities, or based off-site in homes, etc. (Examples: nursing home workers and home health aides, which are among the fastest growing jobs.) This number should be recalculated, and might be more properly assessed at one for three or four.

RESPONSE: Appendix A, Growth Share Methodology, sets forth the methodology used to determine the growth share ratios. The employment growth ratio was determined by using New Jersey's projected affordable housing need, reduced by secondary sources, as the numerator which was divided by the projected employment growth for 2004 through 2018. The projected employment growth was based on the difference between Econsult's employment estimates for 2004 and 2018, or 722,886. Econsult used employment data from the New Jersey Department of Labor and Workforce Development to complete its analysis, which is set forth at Appendix F. Through Econsult's analysis and the resulting growth share ratios, the number of new jobs created has been connected to the resulting affordable housing need of the region. The Council is unable to directly connect a low or moderate income individual whose employer is located in a specific municipality to the affordable obligation of that municipality. Additionally, the Council is unable to directly connect an individual earning a specific salary (which may be classified as low or moderate income) to the obligation of the municipality in which he or she works. This is because all affordable units provided under COAH's certification process must be affirmatively marketed, and all individuals and households residing in those units must be certified. The Council believes that the growth share ratio for both housing and employment growth accurately and effectively address the need for affordable housing within the state for the period of time 2004 through 2018.

COMMENT: The commenter supports the increase in growth share from one for eight to one for four. However, as is noted above the needs assessment that underlies the adjusted ratios is inadequate by a factor of four or five. Consequently, the ratio should be closer to one for two or one for three.

RESPONSE: Appendix A, Growth Share Methodology, sets forth the methodology used to determine the growth share ratios. The housing ratio was determined by using 60 percent of New Jersey's projected affordable housing need, adjusted by secondary sources, as the numerator which was divided by the projected housing unit growth for 2004 through 2018. The projected housing unit growth includes the expected increase in units over the prescribed period of time. Units required to deliver prior round obligations are subtracted from the total projected housing growth. The Council believes that the growth share ratio for both housing and employment growth accurately and effectively address the need for affordable housing within the state for the period of time 1999 through 2018. The numerator in both of these ratios sums to New Jersey's projected affordable housing need. This total is calculated based on an estimate of future housing need as a percentage of future housing overall growth, as was done in the previously adopted Third Round Substantive Rules. The Council's consultants used the most recent and best data available and estimated that future need will grow as it has in the past. This assumes that in the period for which the Council is projecting need (between 1999 and 2018), low- and moderate-income households (those with incomes below 80 percent of their regional medians) represent the same percentage of all households as they do in 2000 (according to the 2000 U.S. Census 5-Percent Public Use Microdata Sample (PUMS)). Low- and moderate-income owners with significant assets - those who have paid off their mortgages and spend less than 38 percent of their income on other housing costs - are removed from this total, and low- and moderate-income residents of non-institutional group quarters are added to this total, to reach a "Total Projected Need (1999-2018)" of 131,297 households. Some of these households are accommodated by supply responses including "Secondary Sources of Supply." These adjustments to the composition and value of the housing stock include filtering and residential conversions (which can decrease the demand for affordable housing) and demolitions (which can increase the demand for affordable housing). In all, these Secondary Sources of Supply are expected to reduce New Jersey's projected affordable housing need by 15,631 units, or from 131,297 to 115,666. This numerator (115,666) is then divided by two denominators - projected housing unit growth from 2004 to 2018 and projected employment growth from 2004 to 2018 - to create two Growth Share Ratios, one for housing and one for employment. Projected housing unit growth incorporates the expected increase in units over this time period as well as the predicted number of replacement units required. Also, units required to deliver prior round obligations are subtracted from this total, resulting in a statewide figure for housing unit growth of 324,813. Projected

job growth is simply based on the difference between Econsult's estimates for 2004 and 2018 employment, or 722,886.

COMMENT: The rules should be clarified to provide that a knowledgeable agency or third party will review the financial feasibility of each project in the Fair Share Plan to ensure that market conditions and development economics do in fact create a realistic opportunity for the projects to be built.

RESPONSE: The Council intends to continue its past practice of acting in consultation with the DCA Division of Housing or other appropriate State agencies when needed, and intends to continue this practice. The Council does not believe that the rule requires clarification in this regard.

COMMENT: The definition of "age restricted housing" seems to include the other 20 percent that can be used for family housing. If this other 20 percent is developed as affordable family housing, would these units still be considered "age restricted" just because of the development they are located within? If so, allowances should be made so that this 20 perent would be considered family housing in these instances.

RESPONSE: The Council has clarified the definition of age restricted housing. The Federal Fair Housing Act, at 42 U.S.C. §3607 states that in order for a housing development to be specifically marketed as an age restricted development, all units must be intended and operated for occupancy by persons 55 years of age or older and that at least 80 percent of the units in an age restricted development must be occupied by at least one person who is 55 years of age or older. While the remaining 20 percent may be occupied by persons not meeting the 55 years of age minimum, the units that such persons occupy must still be marketed as age restricted, therefore they cannot be credited by COAH as family housing.

COMMENT: The definition of "market-rate units" should be modified to exclude units that are income restricted to middle-income households. Since the proposed rules acknowledge a new class of potentially restricted housing called "middle income," this class of housing should also be excluded from the definition.

RESPONSE: The Council is directed by the Fair Housing Act, at N.J.S.A. 52:27D-302a, to address the need for housing among people earning 80 percent of median income and less, and the proposed methodology is required to address that legislative mandate. Absent a legislative change to the Fair Housing Act, COAH's mandate remains to serve those residents whose income is below 80 percent area median income (AMI). The Council was created by the Fair Housing Act to address the need for low- and moderate-income housing caused by municipal exclusionary zoning. Low- and moderate income housing is defined as housing reserved for occupancy by households with a gross household income equal to or less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located, as set forth in *Mt. Laurel I*.

COMMENT: The Council should supplement the definition of "rehabilitation" by adding the following sentence: "Rehabilitation also includes the installation of a code-compliant manufactured home on a pre-existing mobile home space."

RESPONSE: The Council appreciates the commenter's suggestion. As previously mentioned, the Council will consider amendments in the future to address the unique concerns of the manufactured housing community.

COMMENT: The Council should amend the definition of "elder cottage housing opportunities" (ECHO) units to add a reference to manufactured homes.

RESPONSE: The Council appreciates the commenter's suggestion. As previously mentioned, the Council will consider amendments in the future to address the unique concerns of the manufactured housing community.

N.J.A.C. 5:97-2

COMMENT: Municipalities should be subject to a growth share of one affordable unit for every eight market rate

units constructed and one affordable unit for every 25 jobs realized during the time period from January 1, 2004 through the date of formal adoption of the proposed third round rules. If the proposed ratios of one affordable unit for every four market rate units constructed and one affordable unit for every 16 jobs realized are imposed upon municipalities for units constructed prior to the adoption of the proposed regulations this retroactive requirement would punish municipalities for abiding by the regulations in effect at the time.

RESPONSE: The rule will be amended in the near future to provide for a bonus for affordable units that received municipal approvals (preliminary or final approvals) or were included in a redevelopment agreement between December 20, 2004 and June 2, 2008. The units had to have been proposed to address a municipality's growth share obligation in a third round Housing Element and Fair Share Plan that was included in a municipal petition for third round substantive certification between December 20, 2004 and January 25, 2007.

COMMENT: The requirement that the municipality must construct the affordable housing units is financially onerous to the municipalities. State aid has decreased. There are caps on the amount a municipality may increase its budget. Accordingly, it is impossible to have the municipality construct affordable housing at its expense and yet comply with the budgetary cap requirements of State law.

RESPONSE: Municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction through inclusionary zoning such as accessory apartment programs, market to affordable programs, redevelopment, regional contribution agreements and municipally sponsored programs. The rules include an option for a municipality to phase certain components of its plan based on the feasibility of the proposed mechanisms. The Council believes that it is the municipality's responsibility to determine appropriate affordable housing opportunities in its master plan. Municipalities may also apply for grants to create housing opportunities. Nonprofits can also assist towns meet their affordable housing obligations.

COMMENT: Farm labor housing will not generate an affordable housing obligation. The N.J. Highlands Coalition supports this sensible aspect of the proposed rules.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: Of the three components making up the third round obligation, the second is the "prior round obligation." In the 2004 regulations, the second component was "remaining second round obligation." By making a purposeful change in the language, it appears COAH will now require municipalities to again prove their compliance with the second round obligation in its entirety. The provision is unnecessary, and will lead to a renewal of disputes over second round compliance. Municipalities should not be required to address their entire second round obligations again. Only a remaining prior round obligation should need to be addressed in the third round. To do otherwise would seem to reward those municipalities that did not comply with their prior obligations, especially if COAH changes its mind on the prior compliance mechanisms. Additionally, this provision will discourage any court town from submitting a plan to COAH for fear that COAH planners will disagree with judges and court masters in the resolution of *Mount Laurel* litigation. Since this provision was not required by the court in this remand, please explain why it was undertaken.

RESPONSE: It is not the intent of the Council to require a municipality that received credit for built units as part of a prior round substantive certification to demonstrate again that the built affordable units meet the criteria in this subchapter. However, any new units created since substantive certification will be required to comply with the criteria in N.J.A.C. 5:97-4, depending on the rules that were in effect at the time.

COMMENT: COAH's requirement that municipalities plan for the entirety of COAH's projected growth share from the outset will force municipalities into revised zoning and will lead to speculative investment in sites with increased densities created only to meet the projected growth. Sites that will be included in housing plans to meet a projected need will be hard to remove when they prove unneeded because the growth did not occur.

RESPONSE: The Council's third round rules do implement a "growth share" approach to affordable housing by linking the actual production of affordable housing with municipal development and growth. However, *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95, by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 72 (2007), the New Jersey Appellate Division stated that, "If municipalities with substantial amounts of vacant land and access to infrastructure can decide for themselves whether and how much to grow, it is highly likely that housing opportunity will fall far short of identified housing need." *Id.* at 56. With this, the Court placed two limitations on the previous growth share approach the Council took which relied on municipally derived projections: the growth share methodology must contain a sufficient check on municipal discretion in adopting a master plan and zoning ordinance; and the growth share methodology must be based on data from which it can reasonably be concluded that the allocation formula will result in satisfaction of the statewide and regional needs. Therefore, the revised growth share approach relies in part on independent household and employment growth projections, which each municipality will utilize in its long range planning for affordable housing. Municipalities are required to construct or otherwise provide affordable housing in proportion with actual residential and non-residential development. If the actual growth share obligation is less than the projected growth share obligation, municipalities will be required to zone or provide other mechanisms permitted by N.J.A.C. 5:97-6 in keeping with their projections. The actual obligation will be determined based upon what actually occurs and affordable housing production must keep pace with market-rate growth. The commenter should note that municipalities have a myriad of options to satisfy their obligation, including those that do not require inclusionary zoning on vacant land such as accessory apartment programs, market to affordable programs, redevelopment, and municipally sponsored programs. In addition, Council's rules provide flexibility in addressing the affordable housing obligation by providing an option for municipalities to phase certain components of its plan based on feasibility of the proposed mechanisms. In this case, a detailed implementation schedule is required, which includes deadlines for submission of documentation to the Council.

COMMENT: Municipalities, rather than COAH, should have the power to determine their own affordable housing obligations. By not allowing any growth at all, a municipality can completely avoid the obligation to provide any new affordable housing. The proposed rules merely assume that municipal growth will be consistent with the State Plan, ignoring both the non-regulatory nature of the State Plan and the history of New Jersey's development since the State Plan's inception that indicates that municipal growth has indeed, has not been consistent with the State Plan.

RESPONSE: The growth share methodology employs the basic tenet that where growth occurs, that growth can and should provide opportunities for households of all incomes. The Council believes that sound planning practice is precisely the tool that can allow this to occur. When using inclusionary zoning as an affordable housing delivery option, compact forms of development in areas with existing or planned infrastructure is preferred. Where this is not possible, alternative design principles could serve as a viable approach. In a future amendment, the Council will strengthen its rule to require that clustering, lot size averaging and/or attached housing be permitted in inclusionary zones. This is particularly important in PA 4, 4B and 5 where reductions in site improvement costs and careful water quality management planning can represent significant cost reductions to aid in the production of affordable housing. Additionally, where local decision makers determine that inclusionary zoning is not a viable approach to providing affordable housing, municipalities have a myriad of options available for meeting their affordable housing obligations, of which inclusionary development is only one option. Additional options that do not rely on new inclusionary development include the market to affordable program which allows a buying down of existing market-rate units, reconstruction of existing units, municipally sponsored rental programs and accessory apartment programs. Programs available to municipalities are detailed in N.J.A.C. 5:97-6.6 through 6.16.

COMMENT: The proposed COAH regulations would result in a growth obligation for our municipality that is almost double the estimate derived from North Jersey Transportation Planning Authority (NJTPA) household and employment projections. The proposed regulation would also create a rehabilitation obligation within the Township where none previously existed.

RESPONSE: The Council elected to use the NJDLWD projections as the basis for its household and employment growth projections. These were found to be the most reliable Statewide projections available for several reasons. First,

there is a common methodology for forecasting population and employment for all New Jersey Counties. Methodological and data consistency is the primary concern in choosing a set of projection data that applied uniformly across the state. Since the NJDLWD projection models have built-in connection of population and economic changes, the projection method is not only consistent across geography but across sectors. Prepared separately by three different metropolitan planning organizations (MPOs), the county projections from MPOs do not add up to an agreeable State total. Since the South Jersey Transportation Planning Organization (SJTPO) does not report its projection methodology in its website, it cannot be evaluated in detail. The county population projection models used by Delaware Valley Regional Planning Commission (DVRPC) and the NJTPA are similar in terms of using countywide and region-wide cohort survival techniques, but their county employment models differ significantly. DVRPC uses an employment to-population/household method while NJTPA uses the NJDLWD, the New York Metropolitan Transportation Council (NYMTC) and a regional shift-share method to estimate the county employment range. NJDLWD projections, on the other hand do not have such methodological inconsistencies. The NJDLWD approach provides a consistent methodology in its projection of county population and employment by industry (work place based).

COMMENT: The proposed rules require a municipality to prepare an inventory of all vacant non-residential space by use group at the time of petition. The inventory is then subject to future growth share obligation when the non-residential space is reoccupied. Under COAH's formulation, the normal cyclical market process in the commercial and industrial sectors will now impose new affordable housing obligations upon a municipality, in effect adding new affordable units each time a vacant building is reoccupied. This process will discourage smart growth and municipal initiatives to maximize reuse of existing sites because COAH's rules do not enable a municipality to collect a development fee to offset the cost of the new obligation.

RESPONSE: The Council received numerous comments stating that its proposed approach for measuring jobs gained and lost in vacant space was not feasible. The Council will amend its rules in the near future to no longer calculate an obligation through re-occupancy. An obligation will be created only when space is refitted in such a way that causes an expansion. In addition, the rules will be amended to permit job loss to be subtracted from actual growth based on demolition permits issued by square footage provided the structure was occupied one year prior to the demolition. Partially occupied or vacant structures could not be subtracted from actual growth.

COMMENT: It is unclear how growth share would work with the transfer of development rights. When towns send their development out into a receiving area, that receiving area of that town that gets the growth share obligation as well. The builder now has to go out and buy a credit to build extra units, has to go out and pay impact fees, which may prevent TDR from happening.

RESPONSE: The Council appreciates the commenter's concern. The commenter should note that pursuant to the Municipal Land Use Law (MLUL), municipalities considering a TDR program are required to get approval from the State Planning Commission (SPC). The Council intends to work cooperatively with the SPC and will revise its Memorandum of Understanding with the SPC in the near future. Also, pursuant to the MLUL, approval of a TDR program is predicated on the viability of the TDR plan. A municipality would have to demonstrate that an inclusionary development is realistically achievable within a TDR program. COAH recognizes that this will be challenging and will work with municipalities that are considering a TDR program. In addition, the consititutional obligation to provide affordable housing still exists for municipalities with or considering TDR programs and there are many options municipalities can choose from to address this obligation. The Council will also amend its rules in the near future to provide a Smart Growth bonus for affordable units created in PA 1, 2 or Designated Centers as part of a Transit Oriented Development.

COMMENT: If a municipality has no history of issuance of non-residential certificates of occupancy for the seven years preceding the regulations, and if COAH has recognized there is insufficient land in a municipality to accommodate affordable housing, and the population has remained essentially the same since 1970, explain how a projected residential unit growth of 94 new units through 2018 is justified.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture and Department of Environmental Protection (NJDEP). Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this data in the future. COAH's Third Round rules provide a mechanism for municipalities to seek a growth projection adjustment based on lack of available land. Further, the Council will not consider the land that was previously utilized in calculating a second round vacant land adjustment as vacant for the purposes of calculating a third round growth projection adjustment.

COMMENT: The new ratios requiring that one affordable unit be built for every four market rate units, and one affordable unit be created for every 16 jobs, are realistic and appropriate and will maximize affordable housing opportunities where current development is taking place. This increase is in keeping with New Jersey's Mount Laurel doctrine and recognizes our state's urgent need for affordable housing.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: Business retention is a critical element of urban revitalization. Businesses sometimes need to relocate to new facilities do to technological obsolescence of the existing building or because they simply need more space to grow. Where relocation is needed it is important to cities to be able to provide a new location within the same city in order to retain the existing business and the jobs and tax revenues that it provides. New structures and additions that are needed to retain existing business within a municipality should be exempted from the calculation of municipal growth.

RESPONSE: The Council will amend its rules in the near future to no longer calculate an obligation through re-occupancy. An obligation will be created only when space is refitted in such a way that causes an expansion. In addition, the rules will be amended to permit job loss to be subtracted from actual growth based on demolition permits issued by square footage provided the structure was occupied one year prior to the demolition. Partially occupied or vacant structures could not be subtracted from actual growth.

COMMENT: Set-Aside Ratios Are Too High (N.J.A.C. 5:97-2). The set aside ratios under the rule have staggering cost implications. The mandated costs to transfer, subsidize or create affordable units will assure a long, long recovery from the housing downturn. Affordable housing fees to construct non-residential floor area (an additional $ 11.00 to $ 32.00/square foot depending on use) will make looking beyond New Jersey more attractive for anyone hoping to build a warehouse or other industrial or commercial building. No cost-generating exactions should be authorized until a full economic impact analysis is prepared to assess the effects of this proposal on New Jersey's economy.

RESPONSE: The Council does not believe its methodology will negatively affect New Jersey's economic growth. In addition the Council is considering the following: -- The Council will amend its rules in the near future to provide a Smart Growth bonus for affordable units created in PA 1, 2 or Designated Centers as part of a Transit Oriented Development. -- The Council will amend its rules in the near future to provide a redevelopment bonus for affordable housing located in redevelopment areas. -- Municipalities have the flexibility to use a variety of mechanisms; and can choose based on economic goals to assess a developer a payment in lieu. -- FHA determined that each municipality has an obligation to address its region's fair share obligation. The Council is responsible for determining each municipality's obligation using a growth share approach, based on municipal housing and job growth. -- The Council has established standardized payment in lieu to create predictability. -- Also, there is a pending bill in the Assembly, A500, that would eliminate payment in lieu for non-residential sector and instead impose a statewide development fee.

COMMENT: Home Rule vs. COAH Rules (N.J.A.C. 5:97-2). Trying to prove a lack of vacant land in order to reduce the COAH housing allocation may open local zoning to State manipulation, as COAH would be able to seek out

additional available sites and force the municipality to rezone for an overstated complement of growth. Vacant land capacity estimates used by COAH assume that growth will occur at equal or greater densities than seen in historic development patterns, despite the lowered densities that have resulted from widespread zoning changes around the State during the past several decades.

RESPONSE: Guidance for a vacant land adjustment and a growth projection adjustment are included in the proposed rules. While the Council establishes presumptive densities for vacant land as part of the consideration for an adjustment, the Council does not require these sites to be used for inclusionary development. Municipalities have available a myriad of options for meeting their affordable housing obligations, of which inclusionary development is only one option. These options are described in N.J.A.C. 5:97-6. For instance, municipalities may undertake a market to affordable or an accessory apartment program. Municipalities may use development fees and payments in lieu, among other mechanisms, to finance affordable housing production.

COMMENT: If you're building on a brownfield next to a transit-friendly environment with a mixed-use project, then you want to encourage it and your obligation maybe should be lower. If you're going to be building a giant warehouse in the middle of a farm field in Jamesburg, well, maybe your obligation should be higher because no one lives around there and people have to commute and there's quite a bigger demand on services and on housing.

RESPONSE: The Council will amend its rules in the near future to provide incentives for affordable housing created in redevelopment areas as well as affordable housing created in smart growth areas near transit.

COMMENT: Our municipality received Plan Endorsement from the State Planning Commission on January 18, 2006. Contained in our Master Plan are the latest Housing Element and corresponding Fair Share Plan, adopted November 7, 2005. By these efforts, our municipality has shown that it can incorporate affordable housing into the ideals of smart growth. The Report on the Consistency of our municipality's Petition for Initial Plan Endorsement clearly recognizes this where it states that, "This municipality has already demonstrated that they take their housing obligations seriously and have the ability to comprehensively plan and design for it." By removing the Plan Endorsement requirement, the proposed rules become inconsistent with the meaning and intent of the endorsement process. If this requirement is removed, then the time and resources our municipality expended to achieve Plan Endorsement appear wasted as no tangible results have been realized. Accordingly, prior round obligations should remain or concessions should be made to municipalities that have achieved Plan Endorsement.

RESPONSE: The municipality is commended for receiving plan endorsement. The Council believes that such municipalities will be at an advantage when petitioning COAH for substantive certification to the degree that they have comprehensively planning for their affordable housing obligations as part of the plan endorsement process. It is expected that such municipalities will process more quickly through the substantive certification process. The Council does not believe that additional incentives are necessary. The Council determined to delete a blanket plan endorsement requirement as it recognizes that such a requirement for all municipalities to obtain plan endorsement subsequent to petitioning COAH may postpone a municipality's ability to obtain or maintain its substantive certification and protection from builder's remedy litigation.

COMMENT: Several municipalities commented that the number of housing units reported for their municipalities was understated or overstated for 2002 and 2004 and did not reflect actual growth.

RESPONSE: The methodology will be amended in the near future to update the method for calculating the existing housing stock. The updated method will determine the year 2006 housing stock by using the housing counts from the 2000 Census, adding in new construction based on certificates of occupancy, and subtracting housing lost to demolitions. 2004 actual data will be used as the starting point.

COMMENT: In many cases, the proposed employment projections incorporate job growth from non-residential uses, such as educational institutions, that are excluded from the calculation of the growth share. Although a growth

share is not generated, the municipality is held to the higher projection that was based in part on the job growth resulting from these institutions. In these cases, COAH should allow a downward adjustment in the employment projections used by COAH.

RESPONSE: The rule will be amended in the near future to further differentiate types of higher educational uses to reflect those that do generate employment from those that do not generate employment.

COMMENT: The commenter believes the base line numbers utilized by COAH are inaccurate and have lead to a disproportionate amount of the job growth and residential growth being assigned to our municipality. The employment numbers currently being utilized differ substantially from the employment numbers originally used by COAH. The original employment numbers were based upon employment projections adopted by the Metropolitan Planning Organization (MPO). COAH should address the discrepancy between the baseline MPO employment numbers and the baseline projections in the proposal and explain how their consultants arrived at the municipal employment numbers.

RESPONSE: While other projections exist, most notably MPO projections, the population and employment projections provided by the NJDLWD were chosen to provide the county control totals for population and employment for several reasons. First, there is a common methodology for forecasting population and employment for all New Jersey counties. Methodological and data consistency is the primary concern in choosing a set of projection data that applied uniformly across the State. Since the NJDLWD projection models have built-in connection of population and economic changes, the projection method is not only consistent across geography but across sectors. Prepared separately by three different MPOs, the county projections from MPOs do not add up to an agreeable State total. Since the South Jersey Transportation Planning Organization (SJTPO) does not report its projection methodology in its website, the Council's consultants cannot evaluate it in details. The county population projection models used by Delaware Valley Regional Planning Commission (DVRPC) and the North Jersey Transportation Planning Authority (NJTPA) are similar in terms of using countywide and region-wide cohort survival techniques, but their county employment models differ significantly. DVRPC uses an employment to-population/household method while NJTPA uses the NJDLWD, the New York Metropolitan Transportation Council (NYMTC) and a regional shift-share method to estimate the county employment range. NJDLWD projections, on the other hand do not have such methodological inconsistencies. The NJDLWD approach provides a consistent methodology in its projection of county population and employment by industry (work place based). It is reported in http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi03/method.pdf. NJDLWD developed and compared the merit of four projections models: Economic-Demographic Model; Historical Migration Model; Zero Migration Model; Linear Regression Model. NJDLWD chose the Economic-Demographic Model as the preferred model for the county population and employment projection. In this model, related methods are used. Cohort-survival method is used to project population initially but the projection is adjusted by how future labor demand affects age-specific migration. It should be noted that MPOs make some projections at the municipal level. However, each MPO distributes the county totals to municipalities in different manners. Again, SJTPO does not report its method. The allocation method used by NJTPA is similar to the Econsult method. However, DVRPC focuses on adjusting the difference in the current forecast and the previous one; and relies much on the input of county planning staff to revise the municipal forecasts. Once again, the inconsistency is problematic for developing statewide

COMMENT: Agricultural labor housing should be specifically made eligible for COAH housing on New Jersey farmland preserved farms, even though it would not be affirmatively-marketed in the usual sense. There is a deed restriction in the Farmland Preservation Program which states that agricultural labor housing must be for laborers on the farm, and that no agricultural labor housing may be occupied by a relative of the owners of the farm. Therefore, agricultural labor housing could be eligible for COAH credit under the following conditions: 1. The unit must be located on a Farmland Preserved property in the New Jersey Farmland Preservation program (not on a farm that simply has farmland assessment.); 2. The occupant must be income-eligible, and must meet all requirements of the COAH guidelines, except that at least one occupant of the COAH unit may be employed by the farmland preserved farm, and work on the farmland preserved farm; 3. The amount of value for such housing would be in accordance with COAH guidelines for rentals; and 4. All other requirements for management must meet the requirements already-established in

the municipality's COAH-approved operating manual for COAH rental units.

RESPONSE: The Council appreciates the commenter's suggestions. However, the New Jersey Supreme Court's *Warren* decision has generally invalidated residential preference for units that meet a regional need and provided very specific guidelines on any future residential preference, with the exception of age-restricted housing unless it is incorporated into the methodology. Farm labor housing is not included in the Council's methodology and therefore cannot be used to address municipal obligations at this time. The Council recognizes that because this type of housing is specifically designed for farm laborers and is so integrated within the commercial farm, it could not be sold or rented as market rate housing. Therefore, under the proposed rules farm labor housing does not incur a growth share if constructed on a commercial farm and classified as R2, R3 or R5 by the Uniform Construction Code.

N.J.A.C. 5:97-2.1

COMMENT: To the extent a municipality has actual information, or projections regarding residential and non residential growth, which already have been developed as part of its planning activities generally, for Master Plan adoption or re-examination, or for earlier work that it has performed to address its third round growth share obligation, and to the extent any such information reflects actual growth, or projects growth that exceeds COAH's projections in Appendices A and B of Econsult's January 2, 2008 Allocation of Growth Report, such a municipality should be required to use such information. Otherwise, affordable housing opportunities will be lost and efforts will be made to seek always the lowest possible outcome of growth. This will foster a denial of affordable housing opportunities and collides with the clear purpose, intent, and objective of the Fair Housing Act and the Mount Laurel doctrine. For example, if "Anytown," itself, projects growth of 100 residential units (especially if its number reflects a forecast only to 2014, let alone 2018), and non-residential growth of 160 jobs, or if Anytown's actual growth is this high, and COAH's allocations (Appendices A and B of Econosult) are for 50 residential units of growth and 80 non-residential units of growth, COAH should require Anytown to use its projections, which are higher. Otherwise, legitimate justification for higher allocations will be circumvented.

RESPONSE: The Council has established the independent household and employment projections for each municipality in Appendix F. If actual growth were to exceed the projections, the municipality would be required to construct or otherwise provide affordable housing in proportion with actual residential and non-residential development during its period of substantive certification. It would be prudent for a municipality anticipating additional growth above the projections to plan accordingly, but the Council believes it is sufficient to require municipalities to plan for the COAH projections.

N.J.A.C. 5:97-2.2

COMMENT: COAH has not addressed the conditions that are necessary for filtering. It has not addressed the likely relationship between housing units and projected households as a result of the State's ever more restrictive land use policies. Instead, COAH has developed another theoretical study to quantify filtering that occurred from 1993-1999 and to project filtering from 1999-2018. The study does not demonstrate that filtering is occurring in New Jersey.

RESPONSE: The definition of filtering used in the analysis is grounded in the academic literature on the subject. Moreover, this definition is more stringent than what is previously used. Using this definition, the consultants counted the number of units that experienced significant downward changes in both value and income of occupants. Since the resulting number is significantly greater than zero, COAH concludes that filtering has indeed occurred in New Jersey.

COMMENT: COAH's formula for projecting filtering (presented at 40 N.J.R. 400) is incomprehensible. COAH has not justified its determination of filtering based on the record in the rule proposal.

RESPONSE: The formula is a multinomial logit, which enjoys widespread application in generating forecasts of event probabilities and is commonly taught in mid-level statistics courses everywhere. The model is estimated via a

regression that computes the correlation between the direction of a unit's filtering and the enumerated factors affecting this direction.

COMMENT: COAH defines filtering as sound housing units that change hands over time and become available to low and moderate income households at affordable prices. COAH's study on filtering does not establish the condition of housing units. It does not establish that units have changed hands to low and moderate income households and it does not establish that the housing that has purportedly "filtered" is affordable to low and moderate income households.

RESPONSE: While data on the physical condition of units is not extensive, the consultants dropped observations for which the price was deemed to be unrepresentative of an up-to-code unit (for example, [<=]$ 10,000). Moreover, it is unlikely that most units can be in such poor shape as to be considered uninhabitable because almost all lenders require a home inspection. Since almost all lower-income households need a mortgage to finance the purchase of a home, it is implicit that the majority of the housing stock would have to pass a home inspection in order to be purchased. As for the second two comments, the report clearly states what price and income cutoffs were used to identify units that filtered downward and now qualify as affordable.

COMMENT: One of the pre-requisites of filtering is a surplus of housing. There is clearly no surplus of housing in New Jersey.

RESPONSE: Both of these statements are problematic. First, filtering can occur if there is no surplus of housing. Consider a municipality with a vacancy rate of seven percent. If newly built units become occupied by current residents, they vacate their existing dwellings. Their previous dwellings can filter down to new occupants via in-migration of new residents and/or new household formation by existing residents. The seven percent vacancy rate will then be the same as it was prior to the construction of new units. Second, the comment implicitly assumes that a general lack of surplus housing at the statewide level must also be true at the local level, and statistics comparing New Jersey's vacancy rate to the U.S. average is provided to support this. According to the 2006 American Community Survey (U.S. Census), the U.S. had a national vacancy rate of 11.6 percent. According to this same Survey, here are the vacancy rates of several New Jersey municipalities: Camden: 21.1 percent, Newark: 13.9 percent, Trenton: 16.5 percent, Atlantic City: 21.6 percent. Clearly, these all exceed the national average, and often by a significant margin.

COMMENT: COAH has not addressed the five factors necessary for filtering to occur: a surplus of housing; a surplus of new construction over new household formation; no major non-price barriers; moderate operating costs for newly built units; and a limited number of poor households.

RESPONSE: The consultants cite a substantial body of peer-reviewed academic research on the dynamics and characteristics of filtering, and use this research to derive a definition of filtering. While there is variation in this research over the definition of, and prerequisites for filtering, it is widely respected as authoritative. Moreover, as the consultants point out in the report, this definition is more rigorous than what was used in previous rounds because it requires a change in both a housing unit's value and the occupant's incomes.

COMMENT: Non-profit entities and government buildings are uses that do not generate taxes for municipalities, and as such, place a burden on the municipality by removing properties from the tax roles. In calculating growth share obligations, will non-profit businesses and municipal job growth be calculated as part of a municipality's growth share obligation?

RESPONSE: Yes, employment generated by municipalities and non-profit organizations are included in job growth and generate an affordable housing obligation.

COMMENT: Requiring COAH obligations as a function of job growth has very dire implications for economic growth in the State of New Jersey. The town can not accept the burden of COAH obligations generated by businesses, and at the same time, it is likely to lose business investment due to the cost of providing COAH units. What steps will COAH be taking to ensure that job growth is not hindered by the new rules?

RESPONSE: The Council does not believe its methodology will negatively affect New Jersey's economic growth. In addition the Council is considering the following: -- The Council will amend its rules in the near future to provide a Smart Growth bonus for affordable units created in PA 1, 2 or Designated Centers as part of a Transit Oriented Development. -- The Council will amend its rules in the near future to provide a redevelopment bonus for affordable housing located in redevelopment areas. -- Municipalities have the flexibility to use a variety of mechanisms; and can choose based on economic goals to assess a developer a payment in lieu. -- FHA determined that each municipality has an obligation to address its region's fair share obligation. The Council is responsible for determining each municipality's obligation using a growth share approach, based on municipal housing and job growth. -- The Council has established standardized payment in lieu to create predictability. -- Also, there is a pending bill in the Assembly, A500, that would eliminate payment in lieu for non-residential sector and instead impose a statewide development fee.

COMMENT: COAH's estimates of filtering demonstrate that only 25 percent of all filtering occurs outside of urban areas. COAH has arbitrarily inflated the impact of filtering outside of cities by allocating 50 percent of filtering outside urban areas. The impact of this policy decision arbitrarily reduces the housing obligation by 11,827 units.

RESPONSE: The Council elected to only use that component of filtering that would be occurring in suburban locations in the future, recognizing that the *Mount Laurel* decisions were a response to exclusionary zoning in suburban locations. While it is important to continue to promote affordable housing opportunities throughout the State, including in urban areas, the Council also recognizes the need to take into account affordable housing opportunities occurring through filtering in non-urban areas. As a result, the Council made the policy decision to focus its use of filtering as a secondary source of supply on the filtering that occurs in suburban areas. As an aside, it is important to remember that urban filtering continues to provide affordable housing opportunities. The data also supports an increased reliance on suburban locations for filtering, although it is recognized that urban areas will also have a share of filtering in the future. The filtering that occurred in the 1993 to 1999 period took place during a time when the New Jersey housing market was in a down-to-flat period. From the 1999 through 2005 period, the housing market was in an "up" state, and a historically unprecedented one at that. In the earlier period, there was only modest amounts of new construction because price levels were insufficient to cover the cost of construction, and declining-to-flat house prices also dampened general demand for new homes. Consequently, price declines were most pronounced in built-up urban centers, while prices declines were relatively more modest in suburban locales. This confined most filtering to older, urban centers. But, during the more recent period, this dynamic was reversed. Significant price increases spurred significant levels of new construction. While there were notable infill projects in some urban centers like Hoboken, most new home construction has taken place in suburban locales. As construction proceeded even as the market cooled in mid-decade, the supply of new homes exceeded existing demand. This dampening in demand was further exacerbated by the unprecedented run-up in energy costs, which made heating, cooling and commuting to and from these newly constructed (mostly suburban) dwellings even less attractive to many homeowners. Conversely, the relative lack of new supply in urban locations combined with their relatively smaller size (and lower energy costs) and shorter commutes increases their relative attractiveness. Consequently, expectations are that suburbs will bear a relatively greater impact of the current housing downturn and urban centers less than during the last downturn. Thus, the model incorporates all these facts to predict that suburbs will experience a relatively higher percentage of filtering going forward while urban centers experience a relatively lower percentage than they did during the last housing cycle.

COMMENT: Several smart growth goals are achieved by moving businesses currently located in suburban settings on septic systems into a regional center, not to mention the economic benefit of keeping the businesses in New Jersey. If a business relocates within the same COAH region, how is it that a new COAH obligation is generated simply because the jobs are moved to another municipality? This is even more disconcerting when municipalities are adjacent to each other and existing employees will not need to relocate to work there.

RESPONSE: The Council will amend its rules in the near future to permit job loss to be subtracted from actual growth based on demolition permits issued by square footage provided the structure was occupied one year prior to the demolition. Partially occupied or vacant structures could not be subtracted from actual growth. In addition, the rules will be amended at a future date to allow the subtraction of the equivalent number of jobs, as measured by use group in

Appendix D, associated with the relocation of a hospital and/or nursing home from another municipality within the same COAH region based upon the square footage of the original facility. Additional jobs, as measured by use group in Appendix D, resulting from an expansion and/or addition of the relocated hospital and/or nursing home will accrue growth share obligation.

COMMENT: COAH has allocated housing need based more on historical trends than based on the appellate court's direction to allocate need to growth areas. As a result, much of the housing need is allocated to places where it is unlikely to be built.

RESPONSE: COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (DEP) and the Highlands Council to identify vacant lands. The most recent version of the State Plan Policy Map was used to determine appropriate densities for development inside sewer service areas, and the DEP's septic density map to determine appropriate densities for development on lands outside sewer service areas. COAH will be proposing amendments to its rules in the near future to include a revised Vacant Land Report which includes: -- Additional spatial data from DEP to increase the size of riparian buffers required along certain streams; -- Use of zoning and land use spatial data made available by the Highlands to re-compute development capacity in the Highlands Planning Area; and -- An estimate of the impact on future development capacity base resulting from implementation of the pending DEP Water Quality Management Rules. These changes reduce the amount of vacant land in sewer service areas and reduce the permitted development densities in areas outside of sewer service areas.

COMMENT: Forecasts developed by the Delaware Valley Regional Planning Commission (DVRPC) as the metropolitan planning organization for the 114 municipalities in Burlington, Camden, Gloucester, and Mercer counties should be incorporated into the State's methodology for defining future municipal-level housing unit and employment allocations. DVRPC's adopted forecasts are used as a basis for the Commission's planning and modeling activities and, therefore, help guide infrastructure investment in the region. DVRPC understands the State's intent to utilize a consistent methodology for developing Statewide municipal-level growth projections. The commenter believes, however, that DVRPC's forecasting methodology incorporates county and local-level information that the proposed Statewide projections fail to consider, and, in doing so, results in more realistic projections of future growth at the municipal level.

RESPONSE: While other projections exist, most notably Metropolitan Planning Organization (MPO) projections, the population and employment projections provided by the NJDLWD were chosen to provide the county control totals for population and employment for several reasons. First, there is a common methodology for forecasting population and employment for all New Jersey counties. Methodological and data consistency is the primary concern in choosing a set of projection data that applied uniformly across the state. Since the NJDLWD projection models have built-in connection of population and economic changes, the projection method is not only consistent across geography but across sectors. Prepared separately by three different MPOs, the county projections from MPOs do not add up to an agreeable State total. Since the South Jersey Transportation Planning Organization (SJTPO) does not report its projection methodology in its website, the Council's consultants cannot evaluate it in details. The county population projection models used by Delaware Valley Regional Planning Commission (DVRPC) and the North Jersey Transportation Planning Authority (NJTPA) are similar in terms of using countywide and region-wide cohort survival techniques, but their county employment models differ significantly. DVRPC uses an employment to-population/household method while NJTPA uses the NJDLWD, the New York Metropolitan Transportation Council (NYMTC) and a regional shift-share method to estimate the county employment range. NJDLWD projections, on the other hand do not have such methodological inconsistencies. The NJDLWD approach provides a consistent methodology in its projection of county population and employment by industry (work place based). It is reported in http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi03/method.pdf. NJDLWD developed and compared the merit of four projections models: Economic-Demographic Model; Historical Migration Model; Zero Migration Model; Linear Regression Model. NJDLWD chose the Economic-Demographic Model as the preferred model for the county population and employment projection. In this model, related methods are used. Cohort-survival

method is used to project population initially but the projection is adjusted by how future labor demand affects age-specific migration. It should be noted that MPOs make some projections at the municipal level. However, each MPO distributes the county totals to municipalities in different manners. Again, SJTPO does not report its method. The allocation method used by NJTPA is similar to the Econsult method. However, DVRPC focuses on adjusting the difference in the current forecast and the previous one; and relies much on the input of county planning staff to revise the municipal forecasts. Once again, the inconsistency is problematic for developing Statewide rules.

COMMENT: COAH's projection of need does not include 708,081 cost burdened households looking for affordable shelter. Therefore, its calculation of housing need includes only about 15.6 percent of the total housing need. Yet, COAH assumes that all units that "filter" to low and moderate income households will be occupied by low and moderate income households that COAH has chosen to count. There is no reason to think that more than 15.6 percent of filtering and residential conversions will benefit the low and moderate income households that COAH has chosen to count.

RESPONSE: Units that filter to low and moderate income households are identified based upon the median household of the unit's Census Tract and COAH's income guidelines for affordability. Census Tracts are not geographically large areas, and contain only a few thousand residents. As such, the within-tract population of Tracts is quite homogenous with respect to ethnicity, education levels and incomes. For the filtering numbers to be biased against low-income persons, Census Tracts would not only have to be remarkably heterogeneous in terms of income, but the data would also have to be biased so that home purchases in low-income tracts were disproportionately made by persons with incomes significantly different than the Tract median. Both are highly improbable as individual hypothesis, and are made even more improbable by their multiplication against each other, which is the necessary condition to support the commenter's assertion.

COMMENT: COAH should not include sewer service areas outside of PA1 and PA2 and centers in its definition of growth areas. Doing so overstates available land.

RESPONSE: Although efforts have been made by COAH to direct growth to Planning Areas 1 and 2, all municipalities must provide an opportunity for the development of affordable housing within their communities. COAH will be proposing an amendment to its rules in the near future, which will include a revised Vacant Land Analysis that indicates 65,000 acres of land in sewer service areas outside of PA1, PA2 and centers.

COMMENT: COAH's estimates of land capacity, as portrayed in Rutgers' Analysis of Vacant Land in New Jersey And Its Capacity to Support Future Growth, are flawed by accepting current density levels of municipalities. It should require densities that will absorb the affordable housing obligations in the State's growth areas.

RESPONSE: COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (DEP) and the Highlands Council to identify vacant lands. The most recent version of the State Plan Policy Map was used to determine appropriate densities for development inside sewer service areas, and the DEP's septic density map to determine appropriate densities for development on lands outside sewer service areas. COAH will be proposing amendments to its rules in the near future to include a revised Vacant Land Report which includes: -- Additional spatial data from DEP to increase the size of riparian buffers required along certain streams; -- Use of zoning and land use spatial data made available by the Highlands to re-compute development capacity in the Highlands Planning Area; and -- An estimate of the impact on future development capacity base resulting from implementation of the pending DEP Water Quality Management Rules. These changes reduce the amount of vacant land in sewer service areas and reduce the permitted development densities in areas outside of sewer service areas.

COMMENT: In its rulemaking, COAH requires at least half of newly constructed affordable units to be affordable to low income households. COAH has provided no evidence that any of the net filtering benefits any low and moderate income households. If filtering occurs at all, there is no evidence that it benefits low income households. If COAH is

going to use filtering as a concept, it must demonstrate that filtering is creating housing opportunities for low income households.

RESPONSE: The degree to which a filtered unit is considered "affordable" is done by applying COAH's income guidelines to the price of a filtered unit. Units which either filter up or have filtered down but remain unaffordable are not counted as increasing the supply of affordable housing. Moreover, there is nothing in the research's guidelines that mandate differentiation between units that have filtered to moderate income households v. low income households.

N.J.A.C. 5:97-2.2(b)

COMMENT: The rehabilitation number for some municipalities seems to be higher than the actual number of deficient units on the ground. Just as COAH has allowed municipalities to conduct a survey and seek a reduction in the rehabilitation component of their fair share, COAH should allow the same adjustments in its round three regulations.

RESPONSE: The Council will propose an amendment in the near future that would permit a municipality to conduct an exterior housing survey to determine an actual count of deficient units occupied by low or moderate income households, as permitted in N.J.A.C. 5:93.

COMMENT: The rehabilitation share established in Appendix B is inaccurate as applied to many municipalities. Do the regulations permit municipalities to document that the number of deficient units occupied by low or moderate income households is less than the number assigned in Appendix B? If not, why not?

RESPONSE: The Council will propose an amendment in the near future that would permit a municipality to conduct an exterior housing survey to determine an actual count of deficient units occupied by low or moderate income households, as permitted in N.J.A.C. 5:93.

N.J.A.C. 5:97-2.2(d)

COMMENT: The increase in the growth share ratio of one affordable unit for every four market units and one affordable unit for every 16 newly created jobs is based upon inaccurate projections. The projection for growth set forth in Appendix F based upon New Jersey Department of Labor and Workforce Development County Projections which do not take into account the Master Plans and zoning ordinances for the municipalities creates a theoretical growth not based in the reality of land use regulations within the 566 municipalities. The COAH projections and accompanying ratios undermine, if not completely eliminate, the role that Master Plans and Land Use Ordinances are to play under the land use scheme in the state. To say that a municipality can develop a Master Plan based upon all of the criteria that is set forth in the Municipal Land Use Law and yet require that the Master Plan and zoning ordinances create an artificial projected number of affordable units manipulates the Master Plan and zoning ordinances to achieve a stated goal. When the entity making the projection then adopts rules to implement that projection, it becomes a self-fulfilling prophecy and the projection becomes reality because the municipalities are obligated to modify their land use regulations to achieve the projected number.

RESPONSE: *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J.Super.* 1 (*App. Div.* 2007), *certif. denied*, 192 *N.J.* 72 (2007), the New Jersey Appellate Division stated that, "If municipalities with substantial amounts of vacant land and access to infrastructure can decide for themselves whether and how much to grow, it is highly likely that housing opportunity will fall far short of identified housing need." *Id.* At 56. With this, the Court placed two limitations on the previous growth share approach the Council took which relied on municipally derived projections: the growth share methodology must contain a sufficient check on municipal discretion in adopting a master plan and zoning ordinance; and the growth share methodology must be based on data from which it can reasonably be concluded that the allocation formula will result in satisfaction of the statewide and regional needs. Therefore, the revised growth share approach relies in part on independent household and employment growth projections, which each municipality will utilize in its long range planning for affordable housing. In order to respond to

the Court's concerns, the Council determined that an adjustment to these projections should only be warranted by lack of available land capacity, a process similar although not identical to the vacant land adjustment process.

COMMENT: The number of market rate residential units generating an affordable housing obligation should be dependant upon the price of the market rate residential unit. New residential units targeting a municipality's or housing region's median income or slightly above median income households should not generate a growth share obligation at the same ratio as a luxury, single-family subdivision with large lots in an affluent community. The modestly priced residential development is part of New Jersey's solution for promoting housing affordability and COAH should be promoting the construction of such developments. Workforce housing, which is desperately needed in New Jersey, should not generate the same affordable housing obligation as a residential unit, which is only affordable to households with incomes several times the median of the housing region.

RESPONSE: The Council's regulations are premised on the future need for affordable housing and the projected growth throughout New Jersey during the third round period of substantive certification, 1999 through 2018. The Council cannot permit the exclusion of market-rate units, even those priced for middle income households, as it is upon this growth that the delivery ratios of one in five for residential and one in 16 for non-residential were created. However, the Council will amend its rules for inclusionary zoning in the near future to establish presumptive densities based on SDRP planning area, which will also create additional housing opportunities though the market place for workforce housing. The Council will also amend its rules on inclusionary zoning in the near future to provide a 15 percent set-aside for multifamily rental projects in qualifying areas.

COMMENT: The rules must clearly state, for purposes of determining both the actual and projected growth share, when to divide by four and when to divide by five. There has been much confusion about these calculations since the release of the draft rules.

RESPONSE: N.J.A.C. 5:97-2.4(a)2 has been clarified to indicate that a "municipality shall have an obligation of one affordable housing unit among five residential units projected to be constructed. For the purpose of calculating the growth share obligation, the municipality shall divide the resulting total units by five." N.J.A.C. 5:97-2.4(a)1iii has been deleted to no longer subtract affordable units. For the purpose of calculating the projected growth share obligation, the total number to be divided shall consist of both market rate and affordable units and will thus be divided by five, the equivalent of dividing market-rate units only by four.

COMMENT: In principle, projections do not need to be used at all in this methodology. In preliminary discussions a decade ago about using the growth share approach for the third Round regulation, it was thought that projections would have to be made initially so that the municipality would have a fair share number against which to submit its housing element and compliance plan. That rationale has dissolved, however, by the four-year hiatus between the time that the first version of the third Round regulation was announced in 2004 and the revised version that is now proposed. Since 2004, municipalities have been on notice that they would be required to meet a growth share obligation, so there is no unfairness to them in now requiring, in 2008, that they submit a compliance plan based on the actual growth that has occurred since 2004, rather than on uncertain "projections" of the years to come.

RESPONSE: The Council's third round rules do implement a "growth share" approach to affordable housing by linking the actual production of affordable housing with municipal development and growth. However, *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J.Super.* 1 (*App. Div.* 2007), *certif. denied*, 192 *N.J.* 72 (2007), the New Jersey Appellate Division stated that, "If municipalities with substantial amounts of vacant land and access to infrastructure can decide for themselves whether and how much to grow, it is highly likely that housing opportunity will fall far short of identified housing need." *Id.* at 56. With this, the Court placed two limitations on the previous growth share approach the Council took which relied on municipally derived projections: the growth share methodology must contain a sufficient check on municipal discretion in adopting a master plan and zoning ordinance; and the growth share methodology must be based on data from which it can reasonably be concluded that the allocation formula will result in satisfaction of the statewide and regional needs. Therefore, the

revised growth share approach relies in part on independent household and employment growth projections, which each municipality will utilize in its long range planning for affordable housing.

COMMENT: The description of the growth share calculation should be expanded to be clearer and more accurate as it is a projection and an allocation of that projection by COAH's model. Accordingly, this section should refer to "allocations of projected household and employment growth" throughout.

RESPONSE: The Council believes the description of the growth share obligation is sufficient. The commenter should note that the definition for household and employment growth refers to Appendix F, which are the allocations of projected household and employment growth. The Council believes the definition section of its rules provide the clarification the commenter seeks.

N.J.A.C. 5:97-2.2(e)

COMMENT: This regulation should be revised to include a catch-all provision permitting a municipality to exclude a certain development from generating a growth share obligation. There are a number of factual situations in which it may be inequitable for a municipality to incur a growth share obligation as a result of a given development. For example, a municipality has no other developable land and a developer builds a new phase of an upscale project with a homeowner's or condominium association already in place. Given the absence of an alternative, under the proposed Regulations, the affordable units generated by the growth share requirement could not be transferred by means of an RCA or satisfied by a payment-in-lieu contribution, and the affordable units would have to be built on site. However, given the combined cost of the association fees, which are already set in the association's governing documents, the monthly mortgage for a new unit would exceed the permissible total for an affordable household to pay. Because the association fees cannot be changed, given that existing homeowners have relied on the association's governing documents, and because it would be inequitable to require the developer to reduce the price of the unit to a point low enough to allow the monthly payments to be "affordable," an exception to generate the growth share obligation would be in order.

RESPONSE: The commenter should note that while certificates of occupancy generate the growth share obligation, this is distinct from the compliance mechanisms available to address that obligation. The intent of the rule is limited to assigning to the municipality an obligation that is being generated by that development. Municipalities have available a myriad of options for meeting their affordable housing obligations, of which inclusionary development is only one option. These options are described in N.J.A.C. 5:97-6. For instance, municipalities may undertake a market to affordable or an accessory apartment program. Municipalities may use development fees and payments in lieu, among other mechanisms, to finance affordable housing production.

COMMENT: The proposed rule creates an unrealistic compliance mechanism that will preclude a municipality from fully complying with the Fair Housing Act. The rules establish that a municipality is only required to provide for affordable housing in direct proportion to the growth share obligation generated by the actual growth. However, the rules obligate a municipality to ". . .continue to provide a realistic opportunity for affordable housing to address the projected growth share through inclusionary housing or other mechanisms. . ." The rules therefore obligate a town to zone for development that will likely exceed the realistic opportunity or capacity of a municipality to support that growth that will likely be inconsistent with other applicable State and Federal laws and/or will require the expenditure of municipal revenues to meet a projected growth obligation that may never materialize.

RESPONSE: The Council believes that the proposed methodology is entirely consistent with the requirements of the FHA. The Council is required to adopt all rules necessary for effectively carrying out the provisions and purposes of the Fair Housing Act (FHA) at N.J.S.A. 52:27D-307.5. Municipalities will be required to zone or provide other mechanisms in keeping with their projections. The actual obligation will be determined based upon what actually occurs and adjustments will be made during biennial plan reviews.

N.J.A.C. 5:97-2.3(a)1-2

COMMENT: Municipalities should be required to submit an amended version of Appendix F that reflects the on-the-ground realities in the municipality, rather than submitting to general assumptions applied across the state.

RESPONSE: Municipalities are required to construct or otherwise provide affordable housing in proportion with actual residential and non-residential development. In addition, Council's rules provide flexibility in addressing the affordable housing obligation by providing an option for municipalities to phase certain components of its plan based on feasibility of the proposed mechanisms. In this case, a detailed implementation schedule is required, which includes deadlines for submission of documentation to the Council.

N.J.A.C. 5:97-2.3(d)

COMMENT: An explanation is needed as to the need for an alternate growth projection in this section, since the rules stipulate that such projection must result in a greater obligation than COAH's growth projection. If a municipality believed that its growth will exceed that projected by COAH, or if a municipality wanted to further the cause of affordable housing more than COAH, why would they not just include more affordable units in their plan, without bothering with the time and expense of an alternate projection? Since the rules also stipulate that actual growth is to be monitored periodically, why would COAH care if such projection were not provided, as long as the municipal plan provides for the affordable housing?

RESPONSE: The intent of the alternate growth projection is to alert municipalities to the fact that the municipality will be required to provide for the proportionate number of affordable units based on the residential and non-residential development that actually occurs. Municipalities are encouraged to plan to address their anticipated affordable housing obligations.

COMMENT: The alternate method described here for calculating the fair share gives wide discretion to municipalities to devise methods that are now being applied to purely "agricultural development" that increases, rehabilitates, or demolishes farm building space. The high fees and in-lieu requirements bear no rational relationship to the use or cost of the development concerned. COAH must exert more control over municipalities in their development of alternative methods that involve potential agricultural development.

RESPONSE: The commenter should note that Appendix D of the rules differentiates all non-residential developments based on the use group assigned in the Uniform Construction Code. Accordingly, agricultural buildings are categorized as Use Group U, which is excluded from growth share.

COMMENT: In proposing N.J.A.C. 5:97-2.3(d), is it the Council's intention to prevent a local government from demonstrating, using its' own projections, that its' projected growth will not meet or exceed the projections in Appendix F? If so, this may force communities with extensive areas of environmentally sensitive lands or serious water or wastewater infrastructure capacity limitations to create Housing Plans that present unrealistic outcomes that cannot gain requisite NJDEP approvals, which are primarily based upon standards that protect the environment and public health from pollution, degradation, and destruction.

RESPONSE: The commenter should note that municipalities can request an adjustment of household and employment growth projections pursuant to Subchapter 5 based on a lack of available vacant land. The commenter should also note that while certificates of occupancy generate the growth share obligation, this is distinct from the compliance mechanisms available to address that obligation. The Council's third round rules do implement a "growth share" approach to affordable housing by linking the actual production of affordable housing with municipal development and growth. However, *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J.Super.* 1 (*App. Div.* 2007), *certif. denied*, 192 *N.J.* 72 (2007), the New Jersey Appellate Division stated that, "If municipalities with substantial amounts of vacant land and access to infrastructure can decide

for themselves whether and how much to grow, it is highly likely that housing opportunity will fall far short of identified housing need." *Id.* at 56. With this, the Court placed two limitations on the previous growth share approach the Council took which relied on municipally derived projections: the growth share methodology must contain a sufficient check on municipal discretion in adopting a master plan and zoning ordinance; and the growth share methodology must be based on data from which it can reasonably be concluded that the allocation formula will result in satisfaction of the statewide and regional needs. Therefore, the revised growth share approach relies in part on independent household and employment growth projections, which each municipality will utilize in its long range planning for affordable housing. Municipalities are required to construct or otherwise provide affordable housing in proportion with actual residential and non-residential development. If the actual growth share obligation is less than the projected growth share obligation, municipalities will be required to zone or provide other mechanisms permitted by N.J.A.C. 5:97-6 in keeping with their projections. The actual obligation will be determined based upon what actually occurs and affordable housing production must keep pace with market-rate growth. The commenter should note that municipalities have a myriad of options to satisfy their obligation, including those that do not require inclusionary zoning on vacant land such as accessory apartment programs, market to affordable programs, redevelopment, and municipally sponsored programs. In addition, Council's rules provide flexibility in addressing the affordable housing obligation by providing an option for municipalities to phase certain components of its plan based on feasibility of the proposed mechanisms. In this case, a detailed implementation schedule is required, which includes deadlines for submission of documentation to the Council.

N.J.A.C. 5:97-2.3(d)2

COMMENT: The reliance on Appendix D for job calculations is not consistent with the court opinion which remanded this matter to COAH. What the court required was that jobs be counted at the municipal level, not estimated upon some theory that each square foot of use generates an equal number of jobs. Simply by making the job production per square foot of space more aggressive does not address the court's concern. Job calculations should be based upon actual jobs counted at the municipal level.

RESPONSE: Actual construction is used as a growth indicator because knowing where new work space is being built and how much is a stable and timely measure of growth in a municipality. Moreover, municipalities currently track these construction data through building permits and certificates of occupancy. The Council believes that by using the updated Appendix D the Council is complying with the Appellate Division decision, by addressing the Court's concerns that Appendix D had the potential to be arbitrary. The Council hired consultants to conduct a survey to investigate whether Appendix D was accurate and updated Appendix D accordingly. The consultants also conducted a national literature review and factored these findings into the survey results. In compliance with the court's directive, COAH and its consultants explored the possible alternatives for projecting future job growth. While NJDLWD data is available for current jobs, COAH has determined that there is no accurate method for linking future job growth to non-residential land use patterns other than the use of applying the Appendix D method of using projected construction/use to jobs created. This is supported by the consultants and their findings.

N.J.A.C. 5:97-2.4

COMMENT: COAH cannot expect the historical accumulation of affordable housing woes in New Jersey to be solved immediately on the backs of developers and towns by imposing such a high percent of affordable housing. Based on COAH's consultants' reports and data collected 20 percent affordable housing requirements are extremely burdensome, especially to the rental housing industry. As a comparison of COAH's data from Applegate & Thorne-Thomsen, three out of the 27 municipalities have 20 percent requirements. Of those, one municipality (Boulder) exempts rental housing. Furthermore, those three municipalities that have the 20 percent affordable housing requirement, each have significantly lower in-lieu fees, higher density bonuses, and target income levels for affordability that are much higher then New Jersey's 52 percent. It is imperative that COAH reduce the amount of affordable housing created per market rate unit in order to get any housing built in this State. The goal should be to

create real incentives so the free market place then provides affordable housing.

RESPONSE: The Council recognizes that the economics of construction costs in higher density settings typified in urban markets render the use of density increases, especially when the minimum density is lower than the existing density, less effective in establishing viable economic incentives that will result in an increased supply of affordable rental units. Therefore, some flexibility with regard to set-aside, growth share generation, and affordability requirements in these areas is warranted. The rule will be amended in the near future to permit a 15 percent set-aside for rental developments in urban centers and workforce census tracts, as determined by the U.S. Census Bureau, and to permit an exclusion of the additional market rate rentals in such developments from a municipality's actual growth share, as calculated under N.J.A.C. 5:97-2.5. In addition, the Council will consider future rule amendments to address the affordability average of rentals in urban areas.

COMMENT: What is the basis for changing the jobs-to-affordable housing ratio from one affordable unit for every 25 new jobs to one unit for every 16 jobs?

RESPONSE: The numerator in both of these ratios sums to New Jersey's projected affordable housing need. This total is calculated based on an estimate of future housing need as a percentage of future housing overall growth, as was done in the previously adopted Third Round Substantive Rules. The Council's consultants used the most recent and best data available and estimated that future need will grow as it has in the past. This assumes that in the period for which the Council is projecting need (between 1999 and 2018), low- and moderate-income households (those with incomes below 80 percent of their regional medians) represent the same percentage of all households as they do in 2000 (according to the 2000 U.S. Census 5-Percent Public Use Microdata Sample (PUMS)). Low- and moderate-income owners with significant assets - those who have paid off their mortgages and spend less than 38 percent of their income on other housing costs - are removed from this total, and low- and moderate-income residents of non-institutional group quarters are added to this total, to reach a "Total Projected Need (1999-2018)" of 131,297 households. Some of these households are accommodated by supply responses including "Secondary Sources of Supply." These adjustments to the composition and value of the housing stock include filtering and residential conversions (which can decrease the demand for affordable housing) and demolitions (which can increase the demand for affordable housing). In all, these Secondary Sources of Supply are expected to reduce New Jersey's projected affordable housing need by 15,631 units, or from 131,297 to 115,666. This numerator (115,666) is then divided by two denominators - projected housing unit growth from 2004 to 2018 and projected employment growth from 2004 to 2018 - to create two Growth Share Ratios, one for housing and one for employment. Projected housing unit growth incorporates the expected increase in units over this time period as well as the predicted number of replacement units required. Also, units required to deliver prior round obligations are subtracted from this total, resulting in a statewide figure for housing unit growth of 324,813. Projected job growth is simply based on the difference between Econsult's estimates for 2004 and 2018 employment, or 722,886. Assigning 60 percent of projected affordable housing need to projected housing unit growth from 2004 to 2018, and the remainder (40 percent) to projected net employment growth from 2004 to 2018, results in the following growth share ratios: New Jersey (60 percent/40 percent Split): one affordable unit among five units produced and one affordable unit for 16 jobs created.

COMMENT: COAH cannot allow a municipality to reduce its growth share projections based on development activity that helps satisfy the 1987-1999 housing obligation. This policy reduces the third round housing obligation based on activity that addressed the second round obligation. The policy provides two units of credit for the same unit. It fails to recognize that the employment and housing projections are merely a new way to allocate all of the State's housing obligation. If the municipal projections are lowered for any reason, the State's housing need is not even allocated.

RESPONSE: The commenter should note that the 22,980 units were subtracted from the projection of growth because the units represented prior round un-built inclusionary developments and were thus properly accounted for in the methodology.

COMMENT: In various places in this section there is confusion created between the projection and the obligation. This ambiguity can be corrected by referring to "projected obligation," instead of "obligation." It should be made perfectly clear, throughout the regulations, that the obligation is based on actual certificates of occupancy, and until those are issued there are only projections and projected obligations. The mixing of terms such as projection and obligation, make the regulations confusing.

RESPONSE: The Council appreciates the commenter's suggestion and will amend the rule in the near future to clearly state that N.J.A.C. 5:97-2.4 refers to the projected obligation only. Further, N.J.A.C. 5:97-2.5(e) makes it clear that the municipality must continue to provide a realistic opportunity for the projected growth share obligation, regardless of its actual growth.

COMMENT: COAH's projections of housing and employment growth are merely a different way to allocate the State's housing need. The housing need can not be reduced because a municipality disagrees with the projections. Allowing municipalities to lower projections that it believes are incorrect will result in the allocation of far less units. The appellate court was clear that COAH must allocate all the housing need.

RESPONSE: The commenter is referred to Subchapter 5, Adjustments, which provides specific criteria for municipalities to adjust their household and employment projections based on lack of vacant land. These procedures are similar to those established in the second round. With regard to the commenter's concern regarding reduction of the obligation based on slower growth, if the actual growth share obligation is less than the projected growth share obligation, the municipality must continue to provide a realistic opportunity for affordable housing to address the projected growth share through inclusionary zoning or any of the mechanisms permitted by N.J.A.C. 5:97-6. This means, for example, that the municipality must continue its inclusionary zoning, continue its market-to-affordable or its accessory apartment program, and continue to implement its implementation schedule.

COMMENT: COAH should evaluate the economic sustainability of adopting rules which attempt to require approximately 31 percent of all new residential units constructed in New Jersey during the third round to be restricted to households with low or moderate income.

RESPONSE: According to the updated methodology, roughly 38 percent of the State's households fall below 80 percent of their regional median incomes (see Appendix A, page 6). Requiring that 31 percent of new units be affordable to these households ensures that the state will begin to respond to existing housing needs, as COAH is obligated to do, and prevent that need from increasing.

COMMENT: In determining the growth share, there are certain subtractions that are permitted from the household projection. The rule permits the subtraction of market rate units in an inclusionary or mixed use development where the units received credit in a first or second round plan which have been or are projected to be constructed after January 1, 2004. COAH will assume for crediting purposes that market rate units are constructed at four times the number of affordable units or up to 5.67 times the number of affordable units for rentals. There are developments that were approved during the first and second cycles that were approved by a municipality in good faith, with a set aside for affordable housing, prior to the promulgation of the "growth share" approach, that would have sufficiently provided for the then-applicable regulations. Large scale planned unit developments (PUDs) are often many years in the making with substantial planning, design and approvals for sewer and water infrastructure, roads, etc. A municipality should not be accruing additional Round three obligations for the approved units simply because they were not constructed prior to 2004.

RESPONSE: The rules establish a predictable standard upon which all municipalities may rely based upon provisions in the Council's second round rules and creates a uniform minimum threshold that may be fairly and equally applied to all municipalities participating in the Council or Court process. The second round rules established standards for affordable housing in inclusionary developments to be constructed at a 15 percent set-aside in cases where rental housing was being produced or the Council determined that a minimum set-aside of 15 percent with a minimum gross

density of four units per acre was appropriate based upon existing densities surrounding the proposed inclusionary site and market conditions, as described in N.J.A.C. 5:93-5.6(b). The rules provide clarification by specifying that these second round criteria form the basis for the exclusion of market-rate units in the third round at a 15 percent set-aside. The rules do not seek to alter the terms of existing second round substantive certifications or judgments of compliance, but rather clarify the maximum number of market-rate units in a second round inclusionary development that may be excluded from the third round growth share calculation. Further, the Council took into consideration un-built units in inclusionary developments when determining the growth share ratios and the third round methodology. Establishing a uniform minimum threshold is necessary to avoid potential dilution of the affordable housing need.

COMMENT: The rule apparently requires separate projections of residential and non-residential development that must be the same or exceed COAH's projections for each type of development. Municipal projections should be accepted if the total fair share obligation meets or exceeds the COAH-projected total fair share obligation, regardless of the type of growth that the municipality forecasts. Individual municipalities are in the best position to estimate the type of development that is most likely to occur, and as long as the total fair share obligation is the same or higher than COAH's total fair share obligation, the type of development generating the obligation should not matter to COAH.

RESPONSE: The commenter is correct. The Council's rules at N.J.A.C. 5:97-2.3 allow a municipality to use its own household and/or employment growth projections, provided the total growth share obligation that results from its own growth projections exceed the total growth share obligation resulting from the growth projections provided in Appendix F.

COMMENT: If COAH is going to project filtering, it should apply the impact of filtering at the municipal level. Municipalities in which filtering is likely to create housing opportunities should have their housing obligations reduced. Municipalities in which filtering is likely to reduce the affordable housing stock should have their housing obligations increased.

RESPONSE: The degree to which filtering will affect the supply of affordable housing was computed for each municipality, based upon past factors that affected filtering and the size of each municipality's housing stock. COAH applies these numbers to research done by the consultant team to determine present and future need. To examine the dynamics of filtering, it can make more sense to examine it at a level larger than municipality because housing markets are typically measured at the Metropolitan Statistical Area (MSA) level. A "housing market" is typically defined as a geographic area such that a person can change jobs without changing homes, or a person can change homes without changing jobs. An MSA would meet this definition. However, although the unit of observation in the data is the municipality, the consultant's analysis examined the State of New Jersey as a whole. The Council's consultants examined filtering at a statewide level using municipal-level observations. So, although the Council projected filtering at the municipal level, it was done in the context of a Statewide analysis, and hence does not suffer from the bias the commenter is implying.

COMMENT: The commenter recommends the Econsult Allocation Model method should be tested, to the maximum extent possible during the Round three life cycle, against actual happenings in municipalities to ensure that the model remains in touch with reality. The obligation of a municipality is to provide affordable housing related to actual growth, not to statistically modeled projected growth. The accuracy of these projections is questionable on its face.

RESPONSE: The forecasts are based on the best available Statewide data. The projection of growth share is to be used as a planning tool to establish reasonable targets. Municipalities will be required to zone or provide other mechanisms pursuant to N.J.A.C. 5:97-6 in keeping with their projections. The actual obligation will be determined based upon what actually occurs and adjustments will be made during biennial plan reviews.

COMMENT: COAH must not allow a municipality to avoid implementing a component of its plan that is scheduled to be constructed during the latter part of substantive certification because actual growth has not kept pace

with projected growth.

RESPONSE: The Council will conduct biennial plan evaluations upon substantive certification of a municipality's Housing Element and Fair Share Plan. The purpose of the evaluations is to verify that the construction or provision of affordable housing has been in proportion to the actual residential and employment growth in the municipality or in accordance with the implementation schedule required under N.J.A.C. 5:97-3.2(a)4, and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing. Failure to meet the compliance and procedural requirements of N.J.A.C. 5:96-10.4 may ultimately result in the revocation of substantive certification.

N.J.A.C. 5:97-2.4(a)

COMMENT: Assessing a growth share on development approved prior to 2004 and constructed after 2004 unfairly imposes an affordable housing obligation on municipalities for a project approved at a time when it was not clear that the municipality should require affordable housing units or fees from the developer. A prime example of this situation occurs when multiple developments are held up due to sewer or water service approvals. Lack of sewer and water approvals have delayed many projects that were originally on schedule to be constructed prior to 2004 into the post-2004 time period. This is just one of the many situations where municipalities are unfairly assessed a growth share obligation when they did not have the opportunity to comply with the regulations because the regulations did not exist at the time.

RESPONSE: This provision of rules remains unchanged since the December 20, 2004 adoption. Providing affordable housing has been an ongoing constitutional obligation since the *Mount Laurel* decisions and the enactment of the FHA of 1985. Affordable housing obligation figures have been generated by the Council, pursuant to the FHA, for the periods 1987 to 1993 and 1993 to 1999. During the 12-year period covered by the first two sets of the Council's rules, planning for affordable housing has become a routine process at the local level. The release of third round obligations was delayed while the Council awaited the release of 2000 Census data so that maximum accuracy in the development of a new methodology could be achieved. To exclude development approvals that were granted prior to 2004 where certificates of occupancy will not be issued in cases until after January 1, 2004 would be inconsistent with the growth share methodology developed by the Council, and would result in an unacceptable dilution of the affordable housing need. Moreover, while certificates of occupancy generate the growth share obligation, this is distinct from the compliance mechanisms available to address that obligation. Municipalities have available a myriad of options for meeting their affordable housing obligations, of which inclusionary development is only one option. These options are described in N.J.A.C. 5:97-4. For instance, municipalities may negotiate higher set-asides on some inclusionary sites, undertake a municipally-sponsored construction project or an accessory apartment program. Municipalities may use development fees and payments in lieu, among other mechanisms, to finance affordable housing production.

COMMENT: Under N.J.A.C. 5:97-2.4(a)1iii, affordable units are excluded from the growth share calculation. Is the bonus unit or lot excluded from the growth share calculation? If it is not then a double dip has occurred on the municipality.

RESPONSE: The rule has been clarified to require municipalities to divide their household projections by five, (which would include projected third round affordable units) and therefore N.J.A.C. 5:97-2.4(a)1iii has been deleted as an exclusion. The exclusion referred to by the commenter, for bonus market rate units resulting from a density increase in an inclusionary development, may be excluded from the municipality's actual growth share obligation pursuant to N.J.A.C. 5:97-2.5(a)1ii. To simplify the calculation for the projected growth share obligation, only known and unbuilt inclusionary sites remaining from a prior round affordable housing plan are excluded.

COMMENT: COAH has decided that demolitions may not be subtracted from the growth share projection because, presumably, demolitions represent a housing need. While this may be true in urban areas where deteriorated housing occupied by lower income households is demolished to make way for market rate housing, the same is not that case in

suburban areas where small, code compliant homes occupied by affluent households are demolished in favor of larger replacement homes. The rule as originally enacted in 2004 should be reinstated.

RESPONSE: The methodology employed by the Council to establish Statewide affordable housing need recognized that replacement units are a significant factor in determining overall housing demand. Replacement units reflect the net removal of existing homes, through intentional demolition as well as due to disasters such as storms or fires. This component is the number of housing units required to replace units lost, over and above the new units required to accommodate household growth. Statewide, 67,601 replacement units were factored in to the methodology and allocated at a regional level for the period 2004 through 2018. Therefore demolitions have been factored in to the Council's growth projections.

COMMENT: In offering this comment, it must be emphasized that COAH should be applauded for allowing municipalities to exceed the presumptive set-asides set forth in the first and second housing cycles. Those presumptive set-asides have created an artificial barrier to maximizing the potential yield of each inclusionary project. In order for municipalities to have all the tools they need to meet soaring fair share responsibilities, it is essential that COAH maintain the flexibility allowed by the proposed regulations to exceed 20 percent.

RESPONSE: The Council appreciates the commenter's support. The commenter should note that the rule on inclusionary zoning will be amended in the near future to provide presumptive densities by SDRP planning area. The rules will permit municipalities to capture set-asides in excess of 20 percent while maintaining a realistic opportunity for affordable housing.

N.J.A.C. 5:97-2.4(a)1ii

COMMENT: COAH should provide a prior round inclusionary site with a full exemption from generating additional growth share whether the required affordable units were built on-site, off-site or in a receiving municipality. To do otherwise is unfair to municipalities that planned to address affordable housing obligations which COAH certified.

RESPONSE: The rule has been amended to allow the subtraction of market-rate units constructed at a rate of four times the number of affordable units (this is a 20 percent set-aside) constructed on that particular site or constructed off-site but within the municipality, from the household projection. To allow the subtraction of units transferred via a regional contribution agreement would be inconsistent with the growth share methodology since the units are not created within the municipality and a dilution of affordable housing need.

COMMENT: Why must an affordable housing development be included in the Fair Share Plan (FSP) in order for the affordable units to be subtracted from the household projection?

RESPONSE: The Council believes that affordable housing units should be included in a fair share plan to facilitate the determination as to whether a unit is affordable in accordance with the Council's rules and eligible for credit.

COMMENT: N.J.A.C. 5:97-2.4(a)1ii allows the subtraction of market rate units in inclusionary development constructed after January 1, 2004 from the growth share. COAH should consider allowing for the subtraction of projects built prior to this date. The COAH regulation, combined with the additional limits on exclusions above 5.67 times the number of affordable units, results in an artificial higher affordable housing obligation. It serves to increase the overall extent of development, to the detriment of the state's overall State Plan efforts.

RESPONSE: The Council believes that the rule is clear that market-rate units constructed prior to January 1, 2004 are not included in the projection of growth, so, therefore, an exemption from the growth share obligation for these units is not required and would be inconsistent with the methodology used.

COMMENT: This distinction is illogical and unfair. The prior COAH regulations did not provide any indication to

municipalities that a decision to address affordable housing obligations in part through developer-funded RCAs would impact future affordable housing obligations. Municipalities had a right to rely on the prior regulations. The current proposal would retroactively penalize municipalities for decisions made in reliance on COAH regulations in effect when the decisions were made. There is no rational basis for only excluding market units in inclusionary developments, since in both cases the market units provide the economic vehicle for the provision of affordable housing. Indeed, the disparate treatment of RCA-funded developments is contrary to N.J.S.A. 52:27D-312, which specifically authorizes municipalities to utilize RCAs to address up to 50 percent of their affordable housing obligations.

RESPONSE: The Council's methodology uses a 20 percent inclusionary rate to determine which market rate units in inclusionary developments would be excluded from the growth share. This was one of the factors used to determine the growth share ratios. Therefore, it is the Council's intent to be consistent with the growth share methodology. However, the rule will be amended in the near future to allow inclusionary developments to be excluded where the affordable units were provided off-site but within the municipality.

N.J.A.C. 5:97-2.4(a)1iii

COMMENT: Does the phrase "are included in the municipality's third round Fair Share Plan" mean the plan to be submitted this December, or the third round Plan which was submitted December 20, 2005? What does "included" mean? Being mentioned in the 2005 Plan? The rule here indicates that affordable housing units which have not received municipal approvals by the time of petition will be counted toward the growth share obligation, that is, on construction they will require still more affordable units. Why? This would in effect increase the ratio of affordable units to market rate units beyond the one to four ratio directly required. One hundred sixty market rate units would require 40 affordable units, which in turn would require eight more affordable units, which in turn would require two more affordable units, which would require 0.5 affordable unit - an effective rate of one affordable unit per 3.17 market rate units.

RESPONSE: The rule has been clarified to require municipalities to divide their household projections by five (which would include projected third round affordable units) and, therefore, N.J.A.C. 5:97-2.4(a)1iii has been deleted as an exclusion.

COMMENT: Please define "municipal petition." Is this the original third Round petition or the one due later this year in response to the revised third Round rules?

RESPONSE: Since the initial third round rules have been remanded back to the Council, the municipal petition in these rules is a petition in response to the revised third round rules.

COMMENT: What does "municipal approval" mean?

RESPONSE: Municipal approval means preliminary or final site plan and/or subdivision approval. In the case of the assessment of a development fee on a site that is not required to obtain municipal approvals, the zoning and/or construction permit would be synonymous with municipal approvals.

N.J.A.C. 5:97-2.4(a)2

COMMENT: Per 5:97-2.4 a 2, the rules stipulate that residential growth share shall not go below zero after subtracting exclusions. Why if the math works out to zero, or a net loss, wouldn't this be accurately reflected in the accounting for units? This also results in a higher obligation.

RESPONSE: The intent of not going below zero is to ensure that a municipality's affordable housing obligation is not a negative one.

N.J.A.C. 5:97-2.4(a) and (b)

COMMENT: The Econsult Allocation Model method should be tested, to the maximum extent possible during the Round Three life cycle, against actual happenings in municipalities, to ensure that the Model remains in touch with reality. The obligation of a municipality is to provide affordable housing related to actual growth, not to statistically modeled projected growth.

RESPONSE: The Council's third round rules do implement a "growth share" approach to affordable housing by linking the actual production of affordable housing with municipal development and growth. However, *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing,* 390 *N.J. Super* 1 (App. Div. 2007), *cert. denied,* 192 *N.J.* 71 (2007), the New Jersey Appellate Division stated that, "If municipalities with substantial amounts of vacant land and access to infrastructure can decide for themselves whether and how much to grow, it is highly likely that housing opportunity will fall far short of identified housing need." *Id.* at 56. With this, the Court placed two limitations on the previous growth share approach the Council took which relied on municipally derived projections: the growth share methodology must contain a sufficient check on municipal discretion in adopting a master plan and zoning ordinance; and the growth share methodology must be based on data from which it can reasonably be concluded that the allocation formula will result in satisfaction of the statewide and regional needs. Therefore, the revised growth share approach relies in part on independent household and employment growth projections, which each municipality will utilize in its long range planning for affordable housing. These projections provide a target affordable housing obligation. Municipalities are required to construct or otherwise provide affordable housing in proportion with actual residential and non-residential development. In addition, Council's rules provide flexibility in addressing the affordable housing obligation by providing an option for municipalities to phase certain components of its plan based on feasibility of the proposed mechanisms. The implementation schedule provided by N.J.A.C. 5:97-3.2(a)4 must include a detailed timetable for units to be provided within the period of certification and must demonstrate a realistic opportunity as defined under N.J.A.C. 5:97-1.4. In this case, a detailed implementation schedule is required, which includes deadlines for submission of documentation to the Council.

N.J.A.C. 5:97-2.4(b)

COMMENT: The method for calculating growth share from non-residential growth must distinguish between "agricultural development" and other non-residential development.

RESPONSE: The commenter should note that Appendix D of the rules differentiates all non-residential developments based on the use group assigned in the Uniform Construction Code. Accordingly, agricultural buildings are categorized as Use Group U, which is excluded from growth share.

COMMENT: This regulation, which addresses the calculation of growth share obligation, states that "a municipality may fully or partially subtract from its employment projection, non-residential development that, as a condition of preliminary or final site plan approval granted prior to January 1, 2004 or as a stipulation included in a developer's agreement executed prior to January 1, 2004, was required to specifically address a portion of a municipality's first or second round obligation or an obligation determined by the court." Please address how this regulation will be applied and provide examples. Please also identify the criteria for determining when "address[ing] a portion of a municipality's first or second round obligation" amounts to "a condition of preliminary or final site plan approval." Does "address[ing] a portion of a municipality's first or second round obligation" include payments in lieu of construction; development fees; or other financial arrangements? If a developer obtained approvals for a mixed-use development (which included residential and non-residential development in the same development approval), does the mere presence of these approvals in the same application and approving resolution mean that the non-residential growth in the development is exempt from a growth share obligation? If the phasing schedule of the affordable units is not linked to the non-residential development, does that mean that non-residential growth was not "required to specifically address a portion of a municipality's first or second round obligation"?

RESPONSE: The Council recognizes that some growth, both residential and non-residential, is the result of development approvals granted on sites that were included in a prior round plan with a distinct tie between market-rate

development and affordable unit production. In N.J.A.C. 5:97-2.4(a), market-rate units in an inclusionary or mixed-use development where these affordable housing units received credit in a first or second round certified plan which have been or are projected to be constructed after January 1, 2004 may be excluded from growth for the purpose of calculating growth share subject to provisions that reflect the extent to which market-rate housing was necessary to produce affordable units. N.J.A.C. 5:97-2.4(b) applies the same concept to non-residential development wherein there was a specific affordable housing production requirement associated with the non-residential development which has been or is projected to be constructed after January 1, 2004. Some of the jobs generated from these types of non-residential developments may be excluded from growth in these rare circumstances based on the number of jobs estimated in accordance with Appendix D and the number of affordable units provided. For example, a non-residential development that was included in a second round plan was approved as a 115,000 square foot office building where the zoning would have only permitted 100,000 square feet. The increased floor area was permitted in exchange for providing five affordable units. The development would generate 322 jobs and a corresponding 20-unit affordable housing obligation. As five affordable units were a prior round requirement associated with the increased floor area, 80 jobs would be excluded from the growth associated with this development for the purpose of calculating growth share. The remaining 242 jobs would generate a growth share obligation at the rate of one unit for every 16 jobs. In this example, the non-excluded jobs would result in a growth share obligation of 15 units. This provision does not apply to financial arrangements and only when the units were constructed on-site or off-site but within the municipality. Based upon the Council's knowledge of certified municipal Fair Share Plans, the Council has determined that the circumstance described in N.J.A.C. 5:97-2.4(b)1 has rarely occurred. In sum, COAH is treating non-residential development which creates affordable units as part of its development in the same way it treats residential inclusionary developments.

COMMENT: In determining the non-residential growth share, municipalities should be permitted to subtract developments approved or constructed since January 1, 2004 that agreed to pay the housing impact fee in accordance with a municipal ordinance. While the development fee will assist the municipality in meeting its affordable housing obligations, in most cases the fee will not be sufficient to pay for the obligation caused by the addition of jobs at the ratio of one affordable unit per 16 jobs created. The municipality would then be saddled with an obligation and insufficient means to pay for it. For example if a 6,000 square foot professional office building is assessed at $ 1,000,000, and the two percent development fee was imposed as a condition of approval, the municipality will collect $ 20,000. According to Appendix D, this building will create 17 jobs, or a one unit obligation. According to N.J.A.C. 5:97-6.4(c), the cost to subsidize and affordable unit is upward of $ 150,000. This puts a municipality in a position of having to make up the difference in contravention of the Fair Housing Act, which prohibits COAH from forcing municipalities "to raise or expend municipal revenues in order to provide low and moderate income housing." N.J.S.A. 52:27D-311(d).

RESPONSE: The development fee percentages are not intended to reflect the full cost of providing an affordable unit. Rather funds may be pooled to assist the municipality in addressing its fair share obligation. The commenter should note that the rule will be amended in the near future to provide a compliance bonus to municipalities that approved affordable housing units between December 20, 2004 and June 2, 2008, including units approved and funded by non-residential development fees or payments in lieu of construction.

N.J.A.C. 5:97-2.5

COMMENT: The Borough of Westwood recently lost local hospital services when Pascack Valley Hospital closed after 48 years, due to bankruptcy. Recent efforts by public and private entities are close to having the facility be re-opened returning critical medical care to the region. This is a specific case where a municipality will be excessively burdened with the need for additional affordable housing by the re-opening of a facility that was formerly in operation. The closing of this facility lost hundreds of jobs for the municipality and the region. Should the facility reopen, the re-occupation should not result in additional jobs in the municipality but replacement of jobs that pre-existed prior to the closing. It should also be considered that the growth share to re-occupy an existing facility may even become an insurmountable financial impediment in order to fund the additional growth share, preventing a municipality or entity

from reopening such a facility. This needs to be reconsidered to provide for a realistic assessment of growth.

RESPONSE: The Council received numerous comments stating that its proposed approach for measuring jobs gained and lost in vacant space was not feasible. The Council will amend its rules in the near future to no longer calculate an obligation through re-occupancy. An obligation will be is created only when space is refitted in such a way that causes an expansion. In addition, the rules will be amended to permit job loss to be subtracted from actual growth based on demolition permits issued by square footage provided the structure was occupied one year prior to the demolition. Partially occupied or vacant structures could not be subtracted from actual growth. In addition, the rules will be amended at a future date to allow the subtraction of the equivalent number of jobs, as measured by use group in Appendix D, associated with the relocation of a hospital and/or nursing home from another municipality within the same COAH region based upon the square footage of the original facility. Additional jobs, as measured by use group in Appendix D, resulting from an expansion and/or addition of the relocated hospital and/or nursing home will accrue growth share obligation.

COMMENT: A municipality having 20 percent or greater of its total units affordable should be considered having met its COAH obligation. Municipalities providing more than their fair share of affordable units should receive a waiver of their growth share obligation until such time as the percentage of affordable units drops below 20 percent of its total units. If such a waiver is not possible, municipalities should be provided an opportunity to prove the existence of the affordable units beyond the 20 percent and subtract a portion thereof from their Growth Share Obligation. An analysis of 2007 residential rental data in Elizabeth indicates that of the randomly selected 575 units reviewed, the average rents (which included heat and utilities - thus reflecting total housing expenses) were less than the affordable rent limits required by U.S. Department of Housing and Urban Development (HUD). Because these units have no restrictions attached to them, the City of Elizabeth receives no credit for such units. These non-COAH conforming units exist and are affordable to our residents based on HUD established rent limits for low and moderate-income households. According to 2000 Census, over 64 percent of all units (18,275) had rents less than $ 749.00/month, which is below the HUD rent limit for a one-bedroom affordable unit. The 2000 Census median rent was $ 681.00. The average actual 2007 rents (according to our analysis) equaled $ 741.00/month. This indicates that the average rents have barely increased in Elizabeth since the 2000 Census. This is indicative of Elizabeth's success in maintaining affordable rents through its Rent Control Ordinance. If COAH is striving for 20 percent of all units to be affordable, then the City has already well exceeded that goal having reached 64 percent. If anything, the City of Elizabeth needs to diversify its population and attract higher income residents.

RESPONSE: Pursuant to the Fair Housing Act at N.J.S.A. 52:27D-307, the Council has the responsibility to estimate the present and prospective need for affordable housing. The commenter is referring to the present need in a municipality. To address the present need, the Council determines the number of units that need to be rehabilitated in the municipality which may be used to address the municipality's present need. Alternatively, a municipality may conduct a structural conditions survey and submit the results of the survey to COAH setting forth the number of units which require rehabilitation. To address the prospective need, the Council has adopted the methodology outlined in the Appendices. In addition, the Council will consider future rule amendments to address urban concerns over set-asides and the affordability average of rental units.

COMMENT: Employee housing created by an employer to address the needs of its own low and moderate income workforce should not contribute to a growth share obligation. It should also be allowed to offset the impact of employment growth by that particular employer. While it is acknowledged that employee housing will not be affirmatively marketed and therefore should not be used to meet affordable housing obligations generated by other growth in the municipality, it should also be recognized that if employers do provide housing for their own lower income workforce, such housing would address some or all of the obligation otherwise associated with that employer's employment growth and would not increase the demand for affordable housing elsewhere in the community. Moreover, since it would be affordable by its very nature it should not generate a set aside requirement. If COAH can embrace this concept, it goes a long way toward reconciling the issue of faculty and married student housing associated with institutions of higher education.

RESPONSE: The Council appreciates the commenter's suggestion. If the commenter has documentation supporting this position, the Council invites the commenter to submit it.

COMMENT: Why do the proposed rules not allow for the subtraction of demolitions from projected or actual growth?

RESPONSE: The methodology employed by the Council to establish Statewide affordable housing need recognized that replacement units are a significant factor in determining overall housing demand. Replacement units reflect the net removal of existing homes, through intentional demolition as well as due to disasters such as storms or fires. This component is the number of housing units required to replace units lost, over and above the new units required to accommodate household growth. Statewide, 67,601 replacement units were factored in to the methodology and allocated at a regional level for the period 2004 through 2018. Therefore demolitions have been factored in to the Council's growth projections. The Council will amend its rules in the near future to permit job loss to be subtracted from actual growth based on demolition permits issued by square footage provided the structure was occupied one year prior to the demolition. Partially occupied or vacant structures could not be subtracted from actual growth.

COMMENT: In the event that a municipality's planning and zoning is controlled, in whole or part, by a State agency (that is, New Jersey Meadowlands Commission, New Jersey Sports & Exposition Authority, etc), that municipality is only responsible for addressing the affordable housing obligation in the areas where they control the zoning and planning. The State agency shall be responsible for quantifying the appropriate affordable housing obligation for each project that they approve. In areas controlled by State agencies, developers shall be required to make a payment in lieu for each unit and unit fraction that is assigned to their project. The unit obligation shall be assigned to the COAH region where the State agency exercises their authority (that is, N.J. Meadowlands Commission (NJMC)=Bergen, Hudson Passaic, Sussex). In the event that the State agency exercises authority in more that one COAH region, the obligation shall be assigned equally between regions. The payment in lieu fees shall be collected by the State agency and deposited into an escrow account that may be drawn on by all municipalities in the COAH region(s). In the event that the fees are not expended within a four-year period, the funds shall be transferred to a Statewide trust fund.

RESPONSE: In a May 21, 2007 Appellate Court Decision, *IMO the Adoption of N.J.A.C. 19:3, N.J.A.C. 19:4, N.J.A.C. 19:5 and N.J.A.C. 19:6 by the New Jersey Meadowlands Commission*, 393 *N.J.Super.* 173 (App. Div. 2007), the Court held that while the NJMC has "no direct Mount Laurel responsibilities under the FHA. . .it is constitutionally obliged to do more than merely assist municipalities." *Id.* at 180. While the NJMC has an affirmative obligation to zone for affordable housing, the municipality continues to have the responsibility for addressing its affordable housing obligation. Hence, the Council is proposing an amendment to the rules to assist regional entities which hold the planning and zoning authority, such as the NJMC, and the affected municipalities. Specifically, there is a provision which authorizes the NJMC to work cooperatively with each of its 14 constituent municipalities to address a portion of the municipal affordable housing obligation in through an affordable housing partnership program, as outlined in N.J.A.C. 5:97-6.13. To the commenter's point about requiring a developer to make a payment in lieu in an area not controlled by a municipality, the Commission adopted regulations that became effective February 5, 2007, which established standards for payments in lieu of development within the District. These regulations were stayed on March 12, 2007, pending the Council's proposal per the Court. The NJMC has indicated that it will reinstitute these regulations, with corresponding amendments, after the effective date of the Council's re-proposed rules. Publication of the NJMC's proposed rules in the New Jersey Register will be followed by a 60-day public comment period during which the commenter will have the opportunity to submit comments to the NJMC regarding the collection and use of fees, including payments in lieu of construction.

COMMENT: The commenter supports the exclusion of preserved farmland from the vacant land analysis. The commenter is also pleased to see that farm labor housing will not generate additional affordable housing obligations. These efforts support local farmland preservation goals and help retain New Jersey's agricultural base. The commenter requests that COAH consider exemption for any development of volunteer institutions, such as firehouses, as these are

important community components that do not generate jobs or housing need.

RESPONSE: The Council appreciates the commenter's support. The Council does not believe that additional exemptions are warranted at this time, because municipalities have the ability to exempt such uses from inclusionary zoning ordinances or development fee ordinances at the local level.

COMMENT: Existing vacant non-residential buildings must be treated fairly and appropriately when calculating a municipality's growth share obligation. Municipal surveys of vacant non-residential space (both long- and short-term vacancies) will be needed in order to determine non-residential growth share obligations. The establishment of uniform standards and procedures for documenting vacant space will be required, and should be recognized in the rules. Facilities that have been vacant for long periods of time because of lack of market demand and/or functional obsolescence and that underwent substantial "re-fitting" in order to generate new jobs should have a growth share obligation. These facilities should be distinguished from non-residential facilities that have been vacant for short periods of time (that is, less than 12 months), where re-occupancy will not yield significant employment increases as compared to previous occupants, for which growth share obligations should not apply.

RESPONSE: The Council received numerous comments stating that its proposed approach for measuring jobs gained and lost in vacant space was not feasible. The Council will amend its rules in the near future to no longer calculate an obligation through re-occupancy. An obligation will be created only when space is refitted in such a way that causes an expansion. In addition, the rules will be amended to permit job loss to be subtracted from actual growth based on demolition permits issued by square footage provided the structure was occupied one year prior to the demolition. Partially occupied or vacant structures could not be subtracted from actual growth.

COMMENT: The UCCARS reports submitted by the local construction code offices contain certificates of occupancy for many reconstructions that do not involve the building of a new dwelling unit. A total interior renovation would be issued a new certificate of occupancy and therefore reported to DCA as a new CO. The DCA would then share this report with COAH with the assumption that a new CO for a new dwelling unit was constructed.

RESPONSE: Prior to 2008, local Construction Offices have historically reported "Housing Units Gained" and "Housing Units Lost" for both residential and non-residential use groups on their monthly reports to DCA. This data is in addition to data on Certificates of Occupancy which may contain various types of changes in residential structures, that is, new, rehabilitation, conversion, etc. This information provides a direct and easily obtained source of data for communities to use as part of their growth share calculation. Starting in 2008, the DCA Division of Codes and Standards is revising the "Construction Permit Application" to request 'housing unit gained and lost' information differentiated by tenure (sale vs. rental) with a subcategory identifying whether the unit is income restricted. While this information should provide the data needed for each municipality's Housing Element, it would be prudent for the local planning professional to review the data with local officials to determine if any adjustments are needed for unique local conditions.

N.J.A.C. 5:97-2.5(a)

COMMENT: Municipalities should be permitted to subtract market units in Third Round inclusionary developments in calculating actual growth share. COAH's failure to permit the exclusion of Third Round inclusionary developments from the residential growth share calculation eliminates inclusionary development as an effective compliance mechanism for many municipalities. Because the Third Round site market units increase the growth share, almost all of the on-site affordable units must be used to satisfy the additional growth share obligation created by the development itself and therefore cannot be used for other purposes. The result is that municipalities cannot effectively use inclusionary developments to satisfy their fair share obligations. COAH should permit market units in inclusionary Third Round site developments to be subtracted as it does for market units on Second Round sites. Otherwise, the system COAH has created is fatally flawed.

RESPONSE: The Council's regulations are premised on the future need for affordable housing and the projected growth throughout New Jersey during the third round period of substantive certification, 1999 through 2018. The Council cannot permit the exclusion of market-rate units in inclusionary projects as it is upon this projected growth that the delivery ratios of one in five for residential growth and one in 16, for non-residential growth, were created. However, the Council recognizes the commenter's concern and will amend its rules in the near future to provide a Smart Growth bonus for affordable units created in PA 1, 2 or Designated Centers as part of a Transit Oriented Development. The Council will also amend its rules on inclusionary zoning to provide presumptive densities that will facilitate the production of affordable housing.

N.J.A.C. 5:97-2.5(a)1

COMMENT: The rule should state that demolition permits issued between January 1, 2004 and December 31, 2018 are an allowable exclusion and should be subtracted from the number of certificates of occupancy issued. The same applies for the non-residential growth share obligation. N.J.A.C. 5:97-2.5(b)2 should state that jobs lost due to demolition permits issued between January 1, 2004 and December 31, 2008 may be subtracted from the total jobs calculated in N.J.A.C. 5:97-2.5(b)1.

RESPONSE: The rule will be amended in the near future to permit job loss to be subtracted from actual growth based on demolition permits issued by square footage provided the structure was occupied one year prior to the demolition. Partially occupied or vacant structures could not be subtracted from actual growth.

N.J.A.C. 5:97-2.5(a)1ii

COMMENT: This provision should be revised to include a subtraction for the additional market-rate units that are required by N.J.A.C. 5:97-6.4(c)1 be given a developer that is making an in-lieu growth share payment or building the units off-site but elsewhere in the municipality. Any incentive market-rate units should be provided the same level of exemption from generating an additional Third Round growth share, regardless of whether the incentive is on site, off site or a payment in lieu of construction, since they fulfill the same purpose. There is no conceptual basis for treating such units differently.

RESPONSE: This provision has not been included in the final rule adoption. The commenter should note that the rule on inclusionary zoning will be amended in the near future to provide presumptive densities by SDRP planning area. The rules will permit municipalities to capture set-asides in excess of 20 percent while maintaining a realistic opportunity for affordable housing.

N.J.A.C. 5:97-2.5(b)1i

COMMENT: The reliance on Uniform Construction Code (UCC) use groups also inadequately addresses the breadth of land uses. Provisions need to be provided for the special land uses that don't fall neatly into the categories provided. For example, in response to 9/11, many financial service firms are seeking to construct large data centers in New Jersey. Apparently, for purposes of compliance with the UCC a typical data center would fall under use group B (office buildings). Unfortunately, placement within this use group (or any of the others for that matter) would be an extraordinarily poor indicator of potential employment growth. Placed within use group B, a 300,000 square foot data center would project to 840 jobs and a need for 53 affordable units following COAH's methodology. This is not even close to reality. Data centers are essentially large buildings filled with computers, cooling systems and other mechanicals. The employment levels are miniscule. Here, again, the affordable housing obligation resulting from the multipliers would likely be higher than the actual number of employees.

RESPONSE: The Council does not have sufficient data to differentiate between these uses within the B use group at this time. However, the commenter could submit factual data regarding data centers in a motion to the Council and the Council would consider the information presented.

COMMENT: Another common land use that would fall within the S use group would be a self-storage facility. COAH's methodology would suggest that a 200,000 square foot self-storage facility would result in 300 employees (resulting in a COAH obligation of 19 units). Everyone knows that self-storage facilities have very few employees. In reality, a typical 200,000 square foot self-storage facility would have but a mere fraction of the number of employees projected by COAH's numbers. In fact, based on experience in reviewing numerous applications for self-storage facilities, a 200,000 self-storage facility would very likely have fewer than 10 employees. COAH's methodology would drastically overestimate affordable housing needs, crush economic development and unnecessarily cost taxpayers millions of dollars.

RESPONSE: In addition to the 2007 survey performed for Task 4 in Appendix F of COAH's rules, the Council's consultants reviewed 12 studies/surveys completed nationwide between 1987 and 2006. These studies show a range of .46 jobs per 1000 square feet to 1.92 jobs per 1000 square feet; a median of 1.11 and a mean of 1.05. Taking flex space into consideration, COAH's 2007 survey of New Jersey businesses demonstrated that indeed a range of possibilities exist within the UCC use group for storage, including differences between self-storage and distribution centers. To address the commenter's concern, the rule will be amended to use a lower ratio (from 1.5 jobs per 1,000 square feet to one job per 1,000 square feet) for storage uses reflective of the national literature review results conducted by the Council's consultants. With regard to the extremes between labor-intensive and automated storage space, sufficient data was not available from the consultants at this time to make a further differentiation within the storage use group but the Council will consider waivers based on actual jobs in this category in recognition of this potentially wide disparity within the use group.

N.J.A.C. 5:97-2.5(b)1ii

COMMENT: Municipalities are prevented from requiring that the owner of a structure that has been reoccupied to provide for new affordable units or make a payment in lieu of construction. Payment in lieu can only implemented through a municipality's development regulation, that is, for new construction. Therefore, the responsibility for addressing the growth share generated by the occupation of formerly vacant structures will be on the municipalities alone. Asking a municipality to provide for such housing at a cost of about $ 148,700 (payment in lieu) within a five percent budget cap creates an undue burden on the property taxpayers.

RESPONSE: The Council received numerous comments stating that its proposed approach for measuring jobs gained and lost in vacant space was not feasible. The Council will amend its rules in the near future to no longer calculate an obligation through re-occupancy. An obligation will be created only when space is refitted in such a way that causes an expansion. In addition, the rules will be amended to permit job loss to be subtracted from actual growth based on demolition permits issued by square footage provided the structure was occupied one year prior to the demolition. Partially occupied or vacant structures could not be subtracted from actual growth.

COMMENT: Should the reference therein be to N.J.A.C. 5:97-2.3(a)7 instead of N.J.A.C. 5:97-2.2(a)7?

RESPONSE: The proposed reference is correct.

N.J.A.C. 5:97-2.5(b)2

COMMENT: The office buildings that were conceived, zoned, designed and/or constructed between 1980 and 2004 were included in the affordable housing obligation in the first two rounds of the COAH regulations. The affordable units derived from these office buildings have been constructed. The new rule allowing for the re-evaluation of office when a vacant building is re-occupied does not make any sense at all. When the affordable housing requirement is met for the construction of any commercial space, that space cannot be used over and over again to dictate more affordable units.

RESPONSE: The Council received numerous comments stating that its proposed approach for measuring jobs

gained and lost in vacant space was not feasible. The Council will amend its rules in the near future to no longer calculate an obligation through re-occupancy. An obligation will be is created only when space is refitted in such a way that causes an expansion. In addition, the rules will be amended to permit job loss to be subtracted from actual growth based on demolition permits issued by square footage provided the structure was occupied one year prior to the demolition. Partially occupied or vacant structures could not be subtracted from actual growth.

N.J.A.C. 5:97-2.5(c)

COMMENT: The section should clearly state that if the mandatory affordable housing obligation published in Appendix F exceeds the actual growth through December 31, 2018 any affordable housing units constructed above the actual growth shall be a credit in the Fourth Round. In the alternative, if the affordable housing obligation published in Appendix F under estimates the actual growth through 2018, the shortfall of affordable housing constructed should be carried over to the fourth round as an unmet Third Round obligation.

RESPONSE: The commenter is correct. The Council does not believe a rule clarification is necessary. COAH staff has always acknowledged in reports and resolutions that excess and/or surplus credit from completed affordable housing units may be eligible for future credit.

N.J.A.C. 5:97-2.5(d)

COMMENT: There should be a set time frame of when municipalities have to report a comparison of its pro-rated growth share obligation and the actual number of affordable units constructed, for example, every two years. There should be a penalty when municipalities do not comply. Towns have shown they can use the COAH process to delay meeting there obligation with impunity.

RESPONSE: Pursuant to the Council's procedural rules at N.J.A.C. 5:96-10, "The Council shall conduct biennial plan evaluations upon substantive certification of a municipality's Housing Element and Fair Share Plan. The purpose of the plan evaluation is to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing."

N.J.A.C. 5:97-2.5(e)

COMMENT: COAH should clarify whether a municipality will be required to produce actual affordable housing addressing its projected affordable housing number pursuant to N.J.A.C. 5:97-2.4 if actual growth does not trigger it. On page 3 of the rules Summary, COAH states "Municipalities are required to construct or other wise provide affordable housing in proportion with actual residential and non-residential development." N.J.A.C. 5:97-2.5(e) further clarifies this statement by requiring a municipality to provide a realistic opportunity for the provision of affordable housing opportunities to address its projected affordable housing number if actual growth is less than projected growth. In COAH's procedural rules at N.J.A.C. 5:96-10.1(a), the regulation states "The purpose of plan evaluation is to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing." The commenter reads all of this together to say that a municipality must produce or provide affordable housing to keep up with actual growth, demonstrate this as part of plan evaluation and keep a realistic opportunity for affordable housing for the balance if triggered by growth in the future.

RESPONSE: The commenter is correct in noting that N.J.A.C. 5:97-2.5(e) requires a municipality to provide a realistic opportunity for the provision of affordable housing opportunities to address its projected affordable housing need if actual growth is less than projected growth. In COAH's procedural rules at N.J.A.C. 5:96-10.1(a), the rule states "The purpose of plan evaluation is to verify that the construction or provision of affordable housing has been in

proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity or the creation of affordable housing." As the commenter correctly notes, read together, a municipality must produce or provide affordable housing to keep up with actual growth, demonstrate this as part of plan evaluation and keep a realistic opportunity for affordable housing for the balance if triggered by growth in the future.

COMMENT: What does the Council mean by the phrase "realistic opportunity for affordable housing" as mentioned in N.J.A.C. 5:97-2.5(e)? If, as defined in N.J.A.C. 5:97-1.4, the phrase means "that the affordable housing in a municipality's Housing Element and Fair Share Plan will actually be constructed or provided during the 10-year period of certification"; a local government should be able to demonstrate to the Council that the projections at Appendix F, due to extensive areas of environmentally sensitive lands or serious water or wastewater infrastructure capacity limitations, create conditions that mean that a Housing Plan based solely on the projections in Appendix F will present unrealistic outcomes that cannot gain requisite NJDEP approvals and therefore are unlikely to result in construction of affordable units during the 10-year period of certification.

RESPONSE: The commenter should note the phase "realistic opportunity for affordable housing" comes from the FHA. N.J.S.A. 52:27D-311(a) indicates that the municipal housing element shall contain an analysis demonstrating that it will provide a realistic opportunity for the provision of the fair share.

COMMENT: The requirements that actual growth be used to establish the fair share and that municipalities satisfy it should be eliminated. By requiring municipalities to plan for growth share based upon COAH projections and to use them even if actual growth is lower, COAH has effectively abandoned the growth share approach for a methodology assigning fair share obligations to each municipality, as it did in the First and Second Round. All the municipality can do is the math of dividing projected households by five and jobs by 16. Having done this, COAH should jettison the effort to impose yet another obligation on the municipality to satisfy actual growth as well. It is not called for by the Appellate Division decision, nor is it required by the Fair Housing Act. The attempted amalgam of both approaches not only unnecessarily imposes additional responsibilities on municipalities that are being heavily burdened by the extraordinary increase in the growth share obligation, but is unworkable as well. In addition since the COAH projection and ratios result in the allocation of Statewide need to the State's municipalities, imposing an additional fair share obligation on municipalities based on actual growth results in Statewide fair share obligations in excess of the Statewide need. This violates the Mount Laurel doctrine and the Fair Housing Act requirement, N.J.S.A. 52:27D-307c(1), that COAH adopt criteria for municipal determination of its fair share of calculated housing need.

RESPONSE: The Council's third round rules do implement a "growth share" approach to affordable housing by linking the actual production of affordable housing with municipal development and growth. However, *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J.Super.* 1 (*App. Div.* 2007), *certif. denied*, 192 *N.J.* 72 (2007), the New Jersey Appellate Division stated that, "If municipalities with substantial amounts of vacant land and access to infrastructure can decide for themselves whether and how much to grow, it is highly likely that housing opportunity will fall far short of identified housing need." *Id.* at 56. With this, the Court placed two limitations on the previous growth share approach the Council took which relied on municipally derived projections: the growth share methodology must contain a sufficient check on municipal discretion in adopting a master plan and zoning ordinance; and the growth share methodology must be based on data from which it can reasonably be concluded that the allocation formula will result in satisfaction of the statewide and regional needs. Therefore, the revised growth share approach relies in part on independent household and employment growth projections, which each municipality will utilize in its long range planning for affordable housing.

COMMENT: The commenter urges the deletion of this provision, as it undercuts the fairness and general acceptability of a true growth share approach.

RESPONSE: The Council believes that the commenter's suggestion would be inconsistent with the 2007 Appellate Division decision. *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390

N.J.Super. 1 (*App. Div*. 2007), *certif. denied*, 192 *N.J.* 71 (2007), the New Jersey Appellate Division stated that, "If municipalities with substantial amounts of vacant land and access to infrastructure can decide for themselves whether and how much to grow, it is highly likely that housing opportunity will fall far short of identified housing need." *Id.* at 56. With this, the Court placed two limitations on the previous growth share approach the Council took which relied on municipally derived projections: the growth share methodology must contain a sufficient check on municipal discretion in adopting a master plan and zoning ordinance; and the growth share methodology must be based on data from which it can reasonably be concluded that the allocation formula will result in satisfaction of the Statewide and regional needs. Therefore, the revised growth share approach relies in part on independent household and employment growth projections, which each municipality will utilize in its long range planning for affordable housing. Municipalities are required to construct or otherwise provide affordable housing in proportion with actual residential and non-residential development. In addition, Council's rules provide flexibility in addressing the affordable housing obligation by providing an option for municipalities to phase certain components of its plan based on feasibility of the proposed mechanisms. The implementation schedule provided by N.J.A.C. 5:97-3.2(a)4 must include a detailed timetable for units to be provided within the period of certification and must demonstrate a realistic opportunity as defined under N.J.A.C. 5:97-1.4. In this case, a detailed implementation schedule is required, which includes deadlines for submission of documentation to the Council.

COMMENT: The commenter opposes this provision, which requires that a municipality ignore actual growth if it is lower than COAH's growth projection in Appendix F, because it undercuts the accuracy and simplicity of the growth share approach. In principle, projections do not need to be used at all in this methodology. Since 2004, municipalities have been on notice that they would be required to meet a growth share obligation, so there is no unfairness to them in now requiring, in 2008, that they submit a compliance plan based on the actual growth that has occurred since 2004, rather than on uncertain "projections" of the years to come. Even if projections are used initially, however, the municipality should be required to adjust its compliance plan over the life of the Third Round to reflect growth that actually occurs, rather than being held to the growth projections estimated by COAH and its consultants in 2007 if they are higher. To continue to use projections after actual growth data are available is in effect to convert the projections into *allocations*, which is the top-down methodology of the First and Second Rounds that is purportedly replaced by the growth share methodology in this Round. Allocations are a distraction, inviting open-ended controversy and proposals to "tinker" with the outcome, whereas actual growth data are objective and unarguable. COAH seems to have assumed that the Appellate Division opinion of January 2007 requires it to use projections rather than actual growth. It did not. The Court expressed concern that there might not be enough land available to meet the projected need, that the 1:8 and 1:25 growth share ratios might not produce enough housing to meet the need, and that municipalities might under-project their own growth to shift fair share compliance to other municipalities. The Court did *not*, however, mandate COAH's new approach. Rather, it observed that if there was a mismatch, either the ratios would have to be changed or a new allocation methodology devised.

RESPONSE: The Council believes that the commenter's suggestion would be inconsistent with the 2007 Appellate Division decision. *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J.* Super. 1 (App. Div. 2007), *certif. denied* 192 *N.J.* 71(2007), the New Jersey Appellate Division stated that, "If municipalities with substantial amounts of vacant land and access to infrastructure can decide for themselves whether and how much to grow, it is highly likely that housing opportunity will fall far short of identified housing need." *Id.* at 56. With this, the Court placed two limitations on the previous growth share approach the Council took which relied on municipally derived projections: the growth share methodology must contain a sufficient check on municipal discretion in adopting a master plan and zoning ordinance; and the growth share methodology must be based on data from which it can reasonably be concluded that the allocation formula will result in satisfaction of the statewide and regional needs. Therefore, the revised growth share approach relies in part on independent household and employment growth projections, which each municipality will utilize in its long range planning for affordable housing. In accordance with the FHA, the Council has broad authority to promulgate all rules and regulations necessary for carrying out the provisions and purposes of the Act and believes that the adopted rules are consistent with both the Act and the Appellate Division decision.

N.J.A.C. 5:97-3

COMMENT: No bonus credits should be used to produce affordable housing, all the units should have to be filled.

RESPONSE: The Council recognizes the importance providing an incentive for certain types of housing, such as rental housing, and for that reason has included bonus provisions in its regulations. The Courts upheld the grant of rental bonus credits in *Calton Homes, Inc. v. Council on Affordable Housing*, 244 *N.J. Super.* 438 (App. Div. 1990), *certif. denied*, 127 *N.J.* 326 (1991) and *In the Matter of Petition for Substantive Certification Filed by Freehold Township*, Docket No. A-2521-01T2 (decided October 23, 2003).

COMMENT: Given DOT's multi-year delay in developing an alternate access code for centers, it is highly unlikely that the high-density housing called for in the municipality's published growth share, as well as the warehouse job ratios, could ever be approved in areas where sewer capacity exists.

RESPONSE: The Council will advocate on behalf of municipalities and/or affordable housing developers to ensure the expeditious processing of affordable housing projects. The commenter is referred to N.J.A.C. 5:97-10.5, which will be clarified in the near future to address the commenter's concern.

COMMENT: Many municipalities will not be able to accommodate the very high minimum affordable housing obligations mandated by COAH's proposed new rules without sewage treatment plants in Planning Areas 3, 4 and/or 5. Currently NJDEP, in coordination with the recommendations of the State Plan, does not permit new sewage treatment plants within Planning Areas 3, 4 or 5, except within designated "centers." In accordance with the recommendations of the State Plan, "centers" are not necessarily appropriate in every municipality. Therefore, how can municipalities needing to locate substantial affordable housing units on lands in Planning Areas 3, 4 or 5 without center designation be expected to comply with the affordable housing obligations mandated by COAH's proposed new rules? What is needed is for an exception from DEP to allow a limited number of new sewage treatment plants in Planning Areas 3, 4 and 5 without the necessity for a change in planning area designation or center designation. The exception should be limited to new package treatment plants serving only relatively small developments (that is, no more than 50 units) of 100 percent affordable housing units, and with a further restriction that no more than four such treatment plants be permitted. Without such an exception from DEP rules, and given that center designation is not appropriate within all municipalities, many municipalities will not be able to create a reasonable opportunity for the construction of the affordable housing units required by COAH's proposed new rules.

RESPONSE: There are several affordable housing mechanisms available to all municipalities that do not involve inclusionary zoning or necessitate the development of vacant land. These include an accessory apartment program, a market to affordable program, supportive and special needs housing, regional contribution agreements, an affordable housing partnership program, and extension of expiring controls. In addition, bonuses for rental units and very low-income housing are also available. Other innovative approaches meeting the Council's basic requirements for the provision of affordable housing will also be considered by the Council. The Council intends to work cooperatively with NJDEP to identify solutions to water and sewer capacity limitations in areas outside of sewer service areas so that affordable housing projects may proceed and also encourages municipalities to seek center designation as needed and appropriate. The Council also encourages the commenter to communicate directly with DEP about the changes being proposed. The rules will be amended in the near future to provide smart growth bonuses for affordable housing within Transit Oriented Developments in Planning Area 1, Planning Area 2, or a designated Center. In addition, COAH's consultants are updating the vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rule changes.

COMMENT: It would be impossible for our municipality to meet requirements of 482 growth share units, plus additional units associated with warehouse approvals, without rezoning commercial acreage in the sewer service area. While cases of affordable housing on septic do exist in the Township - group homes for the developmentally disabled,

for example - current and proposed rules limit how much of this housing can be included in the Township's inventory.

RESPONSE: The commenter should note that a future rule amendment will reduce the jobs ratio for warehouse uses (Use Group S) from 1.5 to one job per 1,000 square feet. Municipalities may apply for waivers to further differentiate within the Use Group S category, but the Council does not have supporting data to further differentiate at this time. There are several affordable housing mechanisms available to all municipalities that do not involve inclusionary zoning or necessitate the development of vacant land. These include an accessory apartment program, a market to affordable program, supportive and special needs housing, regional contribution agreements, an affordable housing partnership program, and extension of expiring controls. In addition, bonuses for rental units and very low-income housing are also available. Other innovative approaches meeting the Council's basic requirements for the provision of affordable housing will also be considered by the Council. However, in some cases, it may be necessary for a municipality to rezone for residential development or to permit higher density development in order to provide sufficient opportunities for affordable units to be constructed on lands having infrastructure capacity. Existing master plans and current zoning may require alteration to meet these needs.

COMMENT: It seems that the need for affordable rental housing continues to be much greater than the need for for-sale affordable units. The bonus to municipalities for providing affordable rental units should be increased to two-for-one. This added incentive will encourage towns to work with developers to approve new projects that will provide significant numbers of affordable rental housing units.

RESPONSE: The Council recognizes the importance of affordable rental housing and for that reason has included rental bonus provisions that provide an important incentive for creating rental housing. The Council has historically granted two units of credit for eligible rental units and continues to do so with these third round rules; however, the rental bonuses now apply only to rental units in excess of its growth share rental obligation.

COMMENT: Affordable housing is an important obligation, but it is not the only obligation a municipality faces. Township officials must respond to environmental regulations that prohibit encroachment of streams, destruction of wetlands, or harm to wildlife habitat. We must complete the commitment the municipality made in 1999 to preserve 2,400 of its remaining 6,000 acres. We must respond to Department of Education requirements, and parental concerns, about keeping class sizes reasonable. We must respond to Moody's and other rating agencies that ask how we are addressing our debt load, our commercial ratable share, and our plans to reserve for police and fire post-retirement medical costs, which all municipalities must begin funding by the end of the decade. The task of providing affordable housing cannot require us to cast aside 20 years' worth of planning and open space investments, to decide which parts of our natural environment should be sacrificed, or to tax those earning $ 60,000 or less out of their homes.

RESPONSE: The Council fully understands and supports these objectives, and COAH intends to work cooperatively with other State agencies. However, the *Mount Laurel* decisions and the FHA make clear that every municipality has a constitutional obligation to provide for its fair share of the regional need for affordable housing. While COAH prefers affordable housing developments to be located in PA 1, 2 or centers, COAH does not believe it would be appropriate to eliminate all lands outside of these areas from an analysis of vacant, developable land or and affordable housing obligation, particularly as the State agencies, such as DEP, that regulate use of the land would permit development on these lands. Further, the commenter should note that the MOU between the SPC and COAH, dated July 13, 2004, states, "All planning areas can accommodate growth and therefore can accommodate a commensurate affordable housing obligation in a manner consistent with the goals, objectives, and policies of the State Plan." The Council does not encourage the relaxing of environmental standards in order to build affordable housing units on environmentally critical areas. Sites designated to produce affordable housing must be available, approvable, developable and suitable pursuant to the criteria provided in N.J.A.C. 5:97-3.13. The site must be in compliance with the rules and regulations of all agencies with jurisdiction over the site.

COMMENT: There are many developers with stalled residential projects throughout New Jersey who have received preliminary approval from the local municipality to build projects that consist of age restricted units. There is

an overabundance of these types of projects, as towns have allowed new active adult units in order to avoid additional school age children. Incentives should be offered to municipalities that amend the approvals of these age-restricted projects to encourage additional affordable units to be built. These incentives could include bonus credits for units provided through amended approvals.

RESPONSE: The Council has established age-restricted maximums and family housing requirements to ensure a balance of housing opportunities for all segments of the population; however, the extent to which age-restricted development is generally permitted within a municipality is strictly a municipal decision. To encourage the production of non-age-restricted housing, the rules do provide for rental bonuses for family rental units.

COMMENT: Restoring the maximum number of senior units to 25 percent of the total obligation rather than 50 percent is very good in providing more units for workforce housing, providing for those families which are the backbone of our society.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: Accountability to the State Plan should be re-instated in the rules. One option to meet this criterion is to work with the Office of Smart Growth to create a streamlined plan endorsement process and make it a requirement of Fair Share Plan approval.

RESPONSE: Proposed N.J.A.C. 5:97-3.16(a) encourages municipalities that have petitioned the Council for substantive certification to seek plan endorsement from the State Planning Commission; however, the Council is concerned that a requirement to obtain plan endorsement may postpone a municipality's substantive certification. Where realistic opportunity indicates a need for plan endorsement, the Council may, as in the past, require it as a condition of substantive certification.

COMMENT: COAH should fully honor the second round rules at N.J.A.C. 5:93-5.6 which had provided substantial compliance bonuses in the prior round for towns that had completed a substantial proportion of its first round affordable housing obligation. This is fair to a town that has relied on these bonuses as reflected in its second round substantive certification, in its COAH-approved extension of second round certification and now into the third round where the prior round remains part of the cumulative three-part affordable housing obligation.

RESPONSE: The Council has eliminated reductions for substantial compliance from the third round rules. Reductions for substantial compliance were a component of N.J.A.C. 5:93 and, as such, are outside the scope of the current rule proposal. The Council will honor substantial compliance bonuses that were previously granted as part of a municipality's substantive certification.

COMMENT: Will COAH work with NJDEP and the Highlands Council on behalf of municipalities trying to obtain the necessary utilities to develop COAH units?

RESPONSE: Yes, the Council will work on behalf of municipalities to obtain the necessary infrastructure to support affordable housing envisioned in a municipal petition for substantive certification.

COMMENT: The Township cannot recapture lost growth. The affordable housing regulations should not be backdated, but should begin upon the implementation of the revised regulations. Municipalities will be left exposed to the expenditure of substantial municipal funds, particularly when a great deal of approved but unbuilt development has vested rights and cannot be used to satisfy its own growth share. The rules assume that the retroactive obligation can be addressed through inclusionary development but establish a maximum set-aside of 20 percent of affordable units which is insufficient to address the growth share obligation generated from that development alone. The Economic Impact statement should address the municipal cost associated with retroactive growth share obligation. The fact that we are already four years into the third round period raises an issue of fairness and practicality for municipal governments seeking to abide by COAH requirements.

RESPONSE: The Council will amend the rule in the near future to provide for a bonus for affordable units that received municipal approvals (preliminary or final approvals) or were included in a redeveloper's agreement between December 20, 2004 and June 2, 2008. The units must have been proposed to address a municipality's growth share obligation in a third round Housing Element and Fair Share Plan that was included in a municipal petition for third round substantive certification between December 20, 2004 and January 25, 2007. The Council does not mandate the expenditure of municipal revenues to provide low and moderate income housing. Under the Council's proposed rules, a municipality can choose from a variety of mechanisms in addressing its affordable housing obligation, some of which require little or no municipal subsidy. Inclusionary zoning, for example, would require the developer to provide the affordable housing on-site, or as a possible alternative, to provide a payment in lieu of construction. Neither scenario would require a municipal subsidy. Other mechanisms, such as an accessory apartment program and a market to affordable program require minimum subsidies of $ 20,000 and $ 25,000, respectively, which are significantly less than the payment-in-lieu amount cited by the commenter. Further, the proposed rules increase the allowable percentages for both residential and non-residential development fees to assist municipalities in generating additional funding for affordable housing activities.

COMMENT: If the law states that the municipal tax payers will not have to assume the cost of the affordable development why does every action require a resolution of intent to bond in case of short fall?

RESPONSE: A resolution of intent to bond in case of shortfall is required in order to ensure that a proposed mechanism presents a realistic opportunity for the construction of affordable housing and is not intended to be a primary source of funding. Bonding would be necessary only if a source of funding identified in a municipal spending plan were no longer available.

COMMENT: Another enormous problem in the proposed rules is the provision that any inclusionary development opportunities that require zoning changes need to have these zoning changes adopted at the time of submission of the municipality's fair share housing plan. Thus, the municipality is forced to zone for development density it may never need. The idea behind the growth share round is that municipalities are only required to build affordable housing based on the rate at which they grow. The requirement that the zoning be in place prior to the growth is antithetical to the philosophy of the growth share round. Once the zoning is in place, regardless of whether or not the growth ever materializes, municipalities are in a bind since the zoning allows the owner to build a certain amount of units by right at the time of the zoning change. Thus, the builder at any point would be allowed to build at a density to cover anticipated growth, but this growth (and thus its affordable housing requirements) may never occur. This provision will actually accelerate unwanted growth and create tremendous hardship for the taxpayers of this municipality.

RESPONSE: The commenter is referring to N.J.A.C. 5:97-3.2(a)7, which requires a demonstration that existing or planned changes in zoning provide adequate capacity to accommodate any proposed inclusionary developments. These zoning changes need not be in place at the time of submission and are required only if zoning is proposed as a mechanism in the municipality's Fair Share Plan. Necessary zoning changes must be adopted by the municipality within 45 days of substantive certification. The commenter should note, however, that the Appellate Court, *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing,* 390 *N.J. Super.* 1, *certif. denied*, 192 *N.J.* 71 (2007), ruled that the growth share methodology, while constitutional, must contain a sufficient check on municipal discretion in adopting zoning. Therefore, the municipality must provide a realistic opportunity for the provision of affordable housing opportunities to address its projected affordable housing number, even if actual growth is less than projected growth.

COMMENT: COAH should clarify these rules so as to make it clear that rental units constructed after June 6, 1999 in excess of the Second Round rental obligation can receive Third Round rental bonus credits. When read together, the rules appear to permit municipalities to carry over for Third Round bonus crediting purposes rental units on Second Round sites constructed after June 6, 1999. This reading is supported by COAH's Summary, Comment to N.J.A.C. 5:94-3, which states that, "[t]o ensure that only units built during the third round period are eligible for bonuses toward the growth share obligation, the new rule requires that a unit receiving a bonus toward the growth share obligation must

have been built on or after June 6, 1999." The reading is also consistent with the Appellate Division's ruling *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing*, 390 *N.J. Super.* 1, 81 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007), that "excess credits from the second round can be applied to a municipalities third round growth share," citing N.J.A.C. 5:94-3.1(a)1. It is also consistent with the rental bonus policy that rewards municipalities providing more rental units than are required. A policy that does not permit rental units to be carried over for rental bonus credit purposes represents a broken promise by COAH to municipalities to reward efforts to produce rental affordable housing.

RESPONSE: The Council believes that the rules are clear with regard to the granting of rental bonuses. Proposed N.J.A.C. 5:97-3.6(a) lists the conditions under which a rental unit is eligible for a bonus toward the growth share obligation, which include the requirement that the unit was created in the municipality and occupied after June 6, 1999, or that the municipality has provided or received a firm commitment for the construction of the unit.

COMMENT: It should be made clear that Second Round rental units in excess of the Second Round rental obligation can be used to satisfy the Third Round rental obligation.

RESPONSE: The rules will be amended in the near future to indicate that completed rental units in excess of the prior round rental obligation may be eligible to satisfy the third round rental obligation.

COMMENT: The commenter suggests providing a one to one credit for every LEED-certified affordable housing unit. In other words, if a developer had a 20-unit obligation, perhaps the obligation would be cut in half to 10 affordable housing units if the developer produced LEED-certified units. This could also be a mechanism for crediting non-residential LEED buildings as well, wherein the development fee associated with non-residential development would be reduced. The public benefit will be served with the provision of affordable residential units, better long-term affordability in terms of operating costs, and overall benefits to the community, region, and state in terms of the environment.

RESPONSE: The Council recognizes the value of LEED and other sustainable building incentives and programs. Although the Council does not believe that a bonus should be granted for LEED certified affordable housing units, the rules now specifically permit the use of development fees for green building strategies designed to be cost-saving for low- and moderate-income households. The Council believes that the subsidy will serve as a sufficient incentive without the need for additional bonuses.

COMMENT: Developing the plan requires towns to meet the projections, including implementing any necessary zoning changes. This is extremely problematic for a small municipality on a tight budget that might not have the capacity for the zoning, specifically relating to the availability of water.

RESPONSE: There are several affordable housing mechanisms available to all municipalities that do not involve inclusionary zoning or necessitate the development of vacant land. These include an accessory apartment program, a market to affordable program, supportive and special needs housing, regional contribution agreements, an affordable housing partnership program, and extension of expiring controls. In addition, bonuses for rental units and very low-income housing are also available. Other innovative approaches meeting the Council's basic requirements for the provision of affordable housing will also be considered by the Council. Although water capacity constraints may limit future development in some watershed areas, COAH believes that beneficial water reuse, water saving devices and priority treatment to affordable housing units must be given full consideration where capacities are limited.

COMMENT: The rules must clearly state the number of decimal points that calculations should be prepared to, as well as when calculations should be rounded. The proposed rules do not clearly state the number of decimal places to compute the growth share and/or the resulting means of meeting the affordable housing obligation. The rules also do not clearly advise the plan preparer when and/or how to round the growth share and other calculations (that is, round up or round down). Decimal place calculations and rounding must be clarified in the final rules. Failure to do so results in

submission of plans with incomplete and/or incorrect calculations. These plans will have to be returned for revisions, which will further delay the process and result in additional expenditures by municipalities.

RESPONSE: The Council expects that municipalities will use conventional math, thus rounding up if the number .5 or higher or rounding down if it is .4 or lower. In instances where the rule says "a minimum of," the municipality should round to the next higher number because, otherwise, the result would be less than the minimum required.

COMMENT: The commenter urges COAH to work with housing advocates to develop reasonable strategies, including density bonuses, or a reasonable number of bonus credits, to create and maintain housing accessible to families with low and very low incomes. But this housing should specifically be directed at areas which evidence job growth, high quality schools and other measures of opportunity and community stability.

RESPONSE: The Council has in fact worked with a number of constituency groups, including housing advocates in developing the proposed rules. The current proposal includes provisions for density bonuses, rental bonuses, and bonuses for very low income housing, all of which are designed to incentivize the production of affordable housing. In addition, the rules will be amended in the near future to establish minimum presumptive densities by planning area and opportunities for municipalities to address very low income households through inclusionary zoning. Under the Fair Housing Act, every municipality in New Jersey has a constitutional obligation to provide a realistic opportunity for the construction of affordable housing, and therefore these incentives are available to any municipality under the Council's jurisdiction.

COMMENT: The commenter strongly encourages COAH to see its efforts within a framework for comprehensive planning guided by the State Development and Redevelopment Plan. The commenter supports compliance bonuses and suggest they be considered to promote smart growth (for example, around transit villages, in centers at densities that would encourage transit feasibility, etc.).

RESPONSE: The Council recognizes the importance of consistency with smart growth policies of the State Planning Commission and for that reason requires that all affordable housing sites are consistent with the SDRP. N.J.A.C. 5:97-3.15 includes a new provision that links State-funded smart growth initiatives to a minimum 20 percent affordable housing set-aside, to the extent economically feasible, for residential development. Further, the rules will be amended to provide bonuses for Transit Oriented Development in a PA1, PA2, or designated center, and for affordable housing within redevelopment areas pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

COMMENT: The regulations appear to be based upon a 20th century paradigm where new housing would be supplied through the construction of large lot, high square foot, low density single family home and townhome communities. This approach is directly at odds with a state that now has policies requiring preservation of open space, protection of watersheds, elimination of sprawl, smart growth, energy conservation, development in transit villages, reduction of the carbon footprint, redevelopment of cities all accompanied by a host of acronyms and regulations. The regulations are aggressive and punitive in one respect; to the builder, and need to be equally aggressive with regard to the communities who have the obligation under the Mount Laurel doctrine to contribute their fair share of affordable housing to the region in which they are located.

RESPONSE: The Council appreciates the commenter's concerns. The rules will be the subject of a future amendment wherein the Council will provide guidance on minimum densities within inclusionary zones to be determined based on SDRP Planning Areas.

COMMENT: The commenter believes that the rules do not provide proper guidance to communities on the appropriate methods of development that are compatible with the State Plan. Without such direction, communities may unknowingly place themselves in a position contrary to state agencies and programs. The commenter also has deep concerns about the omission of appropriate design and development standards for affordable housing in the rules. Great

time and effort has been invested by the State, State agencies, and interest groups to direct development into areas appropriate for growth - Planning Areas (PAs) 1 and 2 and mixed-use centers in PA 3, 4, and 5. The rules do not address affordable housing issues outside of PA 1 and 2.

RESPONSE: Under the site suitability requirements of N.J.A.C. 5:97-3.13(b), sites designated to produce affordable housing must be consistent with the SDRP. Sites within Planning Areas 1 or 2 or located within a designated center or located in an existing sewer service area are the preferred location for municipalities to address their fair share obligation. To clarify the intent of N.J.A.C. 5:97-3.13(a)3, a future rule amendment will add definitions of "sewer capacity" and "water capacity," and the provision will be revised to reference them. The definitions recognize on-site facilities, thereby addressing situations in which municipalities must rely on development on septic systems. In a future amendment, the Council will strengthen its rules to require that clustering, lot size averaging and/or attached housing be permitted in inclusionary zones. The rules will be the subject of a future amendment wherein the Council will provide guidance on minimum densities within inclusionary zones to be determined based on SDRP Planning Areas.

COMMENT: While generally speaking, it is understandable that a 25 percent senior maximum would benefit mixed affordable housing by providing a better mix of units, it is of significant concern that such a limit (and any concrete limits) would strip towns of their ability to create a housing plan unique to their community. While one municipality may already have adequate senior housing and ample space in their school district to accommodate additional growth, a very different town may have very little senior housing and no additional capacity for school children, meaning a higher proportion of senior affordable units may make more sense in the second municipality. A by-the-numbers approach does not take into consideration the realistic and appropriate differences in character between communities. There must be a greater degree of flexibility for municipalities. While New Jersey needs affordable housing for all segments of the population, affordable units must largely serve younger families and this should be encouraged.

RESPONSE: The Appellate Division decision reversed the third round rule that permitted a municipality to limit up to 50 percent of its affordable housing obligation as age-restricted housing but found the prior age-restricted cap of 25 percent to be reasonable. The Council believes that the 25 percent cap will ensure a balance of housing opportunities for families, seniors and people with disabilities. Further, affordable family units are available to the age-restricted population.

COMMENT: The rules require a municipality to document sewer and water capacity for the entire fair share obligation or take steps to obtain capacity at the time of petition. This is not clear whether it pertains to COAH's target obligation, or the community's actual growth share calculation.

RESPONSE: The Fair Share Plan submitted by a municipality at the time of petition should consist of a plan to address its entire affordable housing obligation, including its growth share obligation based on the growth projections provided by the Council. N.J.A.C. 5:97-3.2(a) further requires that the Fair Share Plan include a demonstration of existing or planned water and sewer capacity "sufficient to accommodate all proposed mechanisms."

N.J.A.C. 5:97-3.1

COMMENT: The regulation should be revised to reflect that the Housing Element should be adopted by the planning board, not the Fair Share Plan, as the planning board only has jurisdiction over the Housing Element through its master plan jurisdiction. The governing body should be required to endorse the Housing Element and adopt the Fair Share Plan, as the latter includes funding decisions and other provisions which are within the jurisdiction of the governing body not the planning board. The regulation does not recognize the fundamental difference in jurisdiction between the two municipal bodies.

RESPONSE: The commenter is correct in noting that, in accordance with the Council's procedural rules, a municipality's Housing Element, which includes the Fair Share Plan, is adopted by the planning board. The governing

body, by resolution, subsequently endorses both documents, including the spending plan, and either requests a filing or petitions the Council for substantive certification. The Council believes that this procedure recognizes the governing body's authority in that it requires official action by the governing body prior to submission to the Council for substantive certification. Upon receiving substantive certification, the governing body must adopt all ordinances and authorize any expenditure necessary for the implementation of the Fair Share Plan.

N.J.A.C. 5:97-3.2

COMMENT: The commenter agrees that N.J.A.C. 5:97-3.2(a)8 requires the demonstration of existing or planned water and sewer capacity sufficient to accommodate all proposed affordable housing compliance mechanisms. The commenter recommends that the Council require more than just a cursory statement that the capacity is available, but rather letters in the form of "will serve" letters from the appropriate sewage authority with the accompanying waste water management plan conformity statement, so as to assure that there exists adequate sanitary sewer and portable water capacity for all proposed compliance mechanisms.

RESPONSE: The Council will amend its regulations in the near future to provide greater clarity as to the definitions of sewer capacity and water capacity. The commenter should note that the regulation permits demonstration of "existing or planned" capacity. Therefore, municipalities may not yet have demonstration of capacity from the appropriate sewage authority. The Council recognizes that sewer and water capacity constraints exist in certain areas of the State, and will coordinate with DEP to identify these areas and work to ensure that limited capacity is directed toward affordable housing.

COMMENT: The rule indicates that a Fair Share Plan must demonstrate that existing or planned water and sewer capacity are sufficient to accommodate all of the proposed compliance mechanisms. This goes to site suitability as well. There are areas of the State where water and sewer are not proposed, would certainly not be easily approved by the NJDEP or the local governing bodies, and would not likely be appropriate at any time over the next 20 years. Yet housing development (low density) in such a municipality will still create a growth share obligation. COAH must recognize the reality that some communities have no realistic prospect of securing public sewer service. Consequently, COAH should allow durational adjustments in the third cycle with regard to the growth share obligation just as it has allowed durational adjustments in the first and second housing cycles.

RESPONSE: The Council agrees with the commenter and will amend the rules to provide for durational adjustments in the third round. However, the commenter should note that durational adjustments are granted on a site specific basis and only in cases where water and sewer capacity is expected to be made available in the near future.

N.J.A.C. 5:97-3.2(a)

COMMENT: COAH should release its proposed form of a fair share plan as soon as possible. COAH has proposed a very short turnaround (as little as four months) for towns to prepare and adopt a new or revised third round plan once COAH's rules are expected to be effective in June 2008. Any forms that will be required to be utilized by municipalities should be included in the rules, so that the reasonableness of the requirements of such forms can be the subject of public review. Since they are not included in the currently proposed rules, they should be the subject of a later rule amendment.

RESPONSE: The Council will be releasing the application form in an expedient manner. The forms are designed to provide guidance to municipalities in preparing their Fair Share Plans and to aid the Council in reviewing plans expeditiously. They are not intended to include substantive changes to the Council's adopted rules. The Council will have a Housing Element and Fair Share Plan application available to assist municipalities in navigating the COAH process. The application will indicate the information that required at the time of petition and the information necessary after certification is granted. In addition, the municipality will have the opportunity to submit supplemental information in response to a report issued by the Council. The rules also include an option available to a municipality to phase

certain components of its plan based on the feasibility of the proposed mechanisms. It is the Council's intent for the rules to provide a level of flexibility so that a municipality can comply with the prescribed timelines and deadlines.

COMMENT: Municipalities may be unable to demonstrate that existing and/or planned water and sewer capacity sufficient to accommodate all proposed mechanisms are or will be available at the time of petition. As such, the submission of information on sewer and water capacity should be linked to the completion of County Wastewater Management Plans and the associated municipal wastewater management plan (WMP) chapter of the affected municipality. It is important to note that municipalities may not have the legal or administrative authority to reserve scarce resources that may be essential to implement its growth share mechanisms. For example, some municipalities that are served by regional sanitary sewage treatment plants do not control the allocation of sewer capacity or sewer permits. This provision should apply only to the reservation of scarce resources the municipality controls.

RESPONSE: Under the Council's rules and in accordance with the Fair Housing Act, a municipal Fair Share Plan must present a realistic opportunity for the provision of affordable housing, which is largely dependent on the availability of sewer and water capacity. Therefore, the Council cannot grant substantive certification without some demonstration that adequate sewer and water capacity is available or planned. The Council does understand, however, that municipalities may not be able to demonstrate availability of sewer and water capacity at the time of petition. For that reason, the rules now provide for the phasing of some of the more complex affordable housing mechanisms, such as municipally-sponsored construction and redevelopment, in accordance with an implementation schedule that sets forth a detailed timetable for units to be provided within the period of substantive certification and for the submission of all information and documentation required. To clarify the intent of N.J.A.C. 5:97-3.13(a)3, a future rule amendment will add definitions of "sewer capacity" and "water capacity," and the provision will be revised to reference them. The definitions recognize on-site facilities, thereby addressing situations in which municipalities must rely on development on septic systems. In addition, the Council will amend the rules to provide for a durational adjustment for the third round. The Council expects that county wastewater management plans will include planning capacity for all affordable housing mechanisms, including zoning, in municipal Fair Share Plans. This rule was previously codified at N.J.A.C. 5:91-10.1 and remains unchanged. In *Hills Dev. Co. v. Bernards Tp. in Somerset Cty.*, 103 *N.J.* 1 (1986), the Supreme Court upheld the validity of the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. The Court concluded that the Council has the power to require, as a condition of its exercise of jurisdiction on an application for substantive certification, that the applying municipality take appropriate measures to preserve "scarce resources," namely, those resources that will probably be essential to the satisfaction of its *Mount Laurel* obligation. *Id.* at 61. As a result, the Council will take the necessary action to ensure that a municipality that is seeking substantive certification, or has been granted substantive certification, ensures that there is sufficient sewer and water to meet its affordable housing obligation.

N.J.A.C. 5:97-3.2(a)4

COMMENT: A municipality proposes to construct 100 family rental units in 2016. The rule proposal would not require the municipality to provide the documentation for the housing until 2014. Is it possible for the municipality to be excused from building the affordable housing because the actual growth in the municipality through 2014 is far less than COAH's projection of growth?

RESPONSE: As part of its plan review of municipal petitions, the Council will evaluate the implementation schedules submitted pursuant to N.J.A.C. 5:97-3.2(a)4 to determine whether they present a realistic opportunity for the production of affordable housing. The rule will be amended in the near future to address this point. Municipalities choosing to schedule affordable housing mechanisms beyond the first plan review pursuant to N.J.A.C. 5:96-10 must identify specific steps to be taken and a detailed timetable for providing the required affordable housing within the period of certification. It is unlikely that the Council would accept, without extraordinary justification, an implementation schedule that defers the construction of a municipally-sponsored project until 2016.

COMMENT: If COAH does not require municipalities experiencing, or for that matter choosing, below-projected levels of growth to implement mechanisms addressing the need figures generated from the projections based on DOL figures, the full affordable housing need in the state will not be met. Thus COAH should require implementation of all mechanisms to address the full household and employment growth projections in every municipality by 2018.

RESPONSE: The implementation schedule required under this section of the rules compels municipalities to produce a timetable for the production of planned affordable units and must address the full household and employment growth projections provided by the Council, or as adjusted pursuant to N.J.A.C. 5:97-5.6. However, the NJDLWD-derived figures and the accompanying housing need figures are, as the commenter states, projections. The Council expects municipalities to use these projections as planning targets in formulating their Fair Share Plans and to subsequently implement the affordable housing mechanisms identified within these Plans. If, despite the good faith implementation of these mechanisms, actual growth falls short of projected growth, the affordable housing need, although reduced, will be adequately addressed.

COMMENT: Will COAH take action against municipalities blocking zoned inclusionary developments through unreasonable planning board denials, cost generative measures, or other adverse actions when those developments are part of a Fair Share Plan but not yet required to meet the growth levels that have occurred to date? If COAH does not enforce the zoning on these sites, municipalities will be able to choose to not provide affordable housing through slowing growth, in violation of the Appellate Division's decision.

RESPONSE: Inclusionary zoning ordinances proposed as part of a municipality's Fair Share Plan must be adopted within 45 days of a grant of substantive certification pursuant to N.J.A.C. 5:96-6.3(e). The Council expects the municipality to enforce its own ordinances. However, should it be determined that a municipality has taken adverse actions such as those mentioned by the commenter to block permitted inclusionary development, the Council has the right to dismiss that municipality from the Council's jurisdiction or to revoke substantive certification pursuant to N.J.A.C. 5:97-10.3(d).

COMMENT: The rule proposal allows a municipality to stagger implementation of a proposed housing element over time. It does not require a municipality to even submit documentation for various planning components at the time of a petition for substantive certification. This is totally inappropriate. How can COAH determine that a municipality has provided a realistic opportunity for a municipal construction project (for example) when COAH has not required the municipality to identify sites, site constraints, the cost of providing the housing or sources of subsidy? How can COAH determine if a municipal construction project, for example, presents a realistic opportunity when it does not know who the developer will be and when the housing units will be constructed? The rule proposal is a prescription for delay.

RESPONSE: The commenter is referring to a provision that permits municipalities to defer the submission of documentation for certain affordable housing mechanisms; however, the provision does not relieve a municipality of its responsibility to implement its Fair Share Plan. Municipalities are required to construct or otherwise provide affordable housing in proportion to actual residential and non-residential development. Therefore, documentation for all affordable housing mechanisms that are addressing the prior round obligation, the rehabilitation share, and the growth obligation up to the first plan review pursuant to N.J.A.C. 5:96-10 shall be submitted at the time of petition. However, some mechanisms may not need to be implemented until after the first plan review. Regional contribution agreements, for example, may be part of a municipality's Fair Share Plan but may not need to be implemented until later in the certification period. Further, the Council recognizes that some mechanisms that are significant sources of affordable housing, such as municipally-sponsored construction and redevelopment, are frequently complex due to the need to establish site control, find a developer or sponsor for the project, obtain funding, and establish economic feasibility. For these reasons, the Council believes that it is appropriate to provide some flexibility with regard to these forms of affordable housing development. The Council believes that realistic opportunity can be demonstrated through the municipality's implementation schedule, which is required at the time of petition pursuant to N.J.A.C. 5:97-3.2(a)4, because the schedule identifies the steps to be taken by the municipality to implement its Fair Share Plan and includes a detailed timetable for units to be provided within the period of substantive certification. The schedule must be reviewed

and approved by the Council prior to substantive certification, and the documentation for a specific mechanism must be submitted no later than two years prior to its schedule implementation. The rule will be clarified to state that the implementation schedule must demonstrate "realistic opportunity" as defined under N.J.A.C. 5:97-1.4, that is, a reasonable likelihood that the affordable housing in a municipality's Housing Element and Fair Share Plan will actually be constructed or provided during the 10-year period of certification. The Council will closely monitor the implementation schedule to ensure that the Fair Share Plan continues to present a realistic opportunity.

COMMENT: Documentation for extension of expiring controls should also be required at the time of the petition in order for COAH to ensure that the property referenced actually meets the criteria for extension of expiring controls.

RESPONSE: The Council agrees with the commenter and will amend the rule in the near future accordingly.

COMMENT: If a municipality postpones the implementation of a compliance technique incorporated in its fair share plan until later in the substantive certification period, it must provide inclusionary zoning for the units deferred by the implementation schedule. The zoning must remain in place until the municipality has created a realistic opportunity for the deferred compliance technique.

RESPONSE: Inclusionary zoning is only one of several mechanisms that can be utilized by a municipality to address its fair share obligation. The Council does not dictate which of these options must be utilized. The commenter is referring to a provision that permits municipalities to phase implementation of certain affordable housing mechanisms. The implementation schedule permitted by N.J.A.C. 5:97-3.2(a)4 must include a detailed timetable for units to be provided within the period of substantive certification. The rule will be amended in the near future to state that the implementation schedule and must demonstrate "realistic opportunity" as defined under N.J.A.C. 5:97-1.4, that is, a reasonable likelihood that the affordable housing in a municipality's Housing Element and Fair Share Plan will actually be constructed or provided during the 10-year period of certification. The Council will closely monitor the implementation schedule to ensure that the Fair Share Plan continues to present a realistic opportunity.

COMMENT: Why is COAH not requiring documentation for redevelopment plans at the time of the petition, given that such plans require that the municipality set out land use policies that require such redevelopment and prohibit inconsistent development from occurring?

RESPONSE: Redevelopment is an extremely important and potentially significant source of affordable housing in municipalities that are at or near build-out. The Council recognizes, however, that the requirements of the Local Redevelopment and Housing Law are frequently complex and time-consuming and somewhat dependent on the actions of other regulatory agencies. In addition, there are many potential issues relating to site control, remediation, and relocation that are somewhat out of municipal control. Therefore, the Council believes that it is appropriate to provide some flexibility with regard this form of affordable housing development. However, the Council does require that a municipality provide a detailed implementation schedule for this mechanism pursuant to N.J.A.C. 5:97-3.2(a)4, which must be reviewed and approved by the Council prior to substantive certification, and that the documentation be submitted no later than two years prior to scheduled implementation. The Council will closely monitor the implementation schedule to ensure that the proposed redevelopment continues to present a realistic opportunity.

COMMENT: Why is COAH not requiring documentation for 100 percent affordable developments at the time of the petition, given that such developments require appropriate municipal zoning and for the municipality to ensure that that land is not used for other development?

RESPONSE: Municipally sponsored and 100 percent affordable developments have proven to be an extremely important and significant source of affordable housing. The Council recognizes, however, that the construction of such developments are frequently complex due to the need to establish site control, find a developer or sponsor for the project, obtain funding, and establish economic feasibility and therefore believes that it is appropriate to provide some flexibility with regard to this form of affordable housing development. However, the Council does require that a

municipality provide a detailed implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4 for this mechanism at the time of petition, which must be reviewed and approved by the Council prior to substantive certification, and that the documentation be submitted no later than two years prior to scheduled implementation. If land is a scarce resource, then phasing is not permitted unless the municipality demonstrates that the mechanism(s) does not rely upon the availability of vacant land or takes appropriate measures to reserve scarce resources that may be essential to implement the mechanisms that rely on the availability of vacant land.

COMMENT: The commenter objects to this proposed approach because it is another attempt by COAH to put unchecked and unlawful discretion in the hands of municipalities that choose to discourage growth that attracts families with children and lower-income households. The Appellate Division made clear in its decision that "[a]ny growth share approach must place some check on municipal discretion. If municipalities with substantial amounts of vacant land and access to infrastructure can decide for themselves whether and how much to grow, it is highly likely that housing opportunity will fall far short of identified housing need." *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1, 56 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007). By permitting towns to create a timetable for when affordable housing units will be provided, without requiring any standards or checks on that power, COAH has again adopted an unconstitutional scheme for ensuring that affordable housing obligations are satisfied. N.J.A.C. 5:97-3.2(a)3 would permit municipalities to claim they are going to rely on little or no inclusionary development and to in turn thus forestall the development of affordable housing in their municipalities. As long as they otherwise discourage growth, they will not be behind in their growth share obligations in COAH's eyes. An obligation that could have been met in 2009 if the town did not have the power to reduce growth can be pushed off for close to a decade by simply scheduling the units for production then and advising COAH that it is because the obligation will not accrue until then. This approach is unconstitutional and should be revised to reduce the discretion of municipalities.

RESPONSE: The commenter is referring to a provision that permits municipalities to defer the submission of documentation for certain affordable housing mechanisms; however, the provision does not relieve a municipality of its responsibility to implement its Fair Share Plan. Municipalities are required to construct or otherwise provide affordable housing in proportion to actual residential and non-residential development. Therefore, documentation for all affordable housing mechanisms that are addressing the prior round obligation, the rehabilitation share, and the growth obligation up to the first plan review pursuant to N.J.A.C. 5:96-10 shall be submitted at the time of petition. However, some mechanisms may not need to be implemented until after the first plan review. Regional contribution agreements, for example, may be part of a municipality's Fair Share Plan but may not need to be implemented until later in the certification period. Further, the Council recognizes that some mechanisms that are significant sources of affordable housing, such as municipally-sponsored construction and redevelopment, are frequently complex due to the need to establish site control, find a developer or sponsor for the project, obtain funding, and establish economic feasibility. For these reasons, the Council believes that it is appropriate to provide some flexibility with regard to these forms of affordable housing development. The Council believes that realistic opportunity can be demonstrated through the municipality's implementation schedule, which is required at the time of petition pursuant to N.J.A.C. 5:97-3.2(a)4, because the schedule identifies the steps to be taken by the municipality to implement its Fair Share Plan and includes a detailed timetable for units to be provided within the period of substantive certification. The schedule must be reviewed and approved by the Council prior to substantive certification, and the documentation for a specific mechanism must be submitted no later than two years prior to its scheduled implementation. The rule will be amended in the near future to state that the implementation schedule must demonstrate "realistic opportunity" as defined under N.J.A.C. 5:97-1.4, that is, a reasonable likelihood that the affordable housing in a municipality's Housing Element and Fair Share Plan will actually be constructed or provided during the 10-year period of certification. The Council will closely monitor the implementation schedule to ensure that the Fair Share Plan continues to present a realistic opportunity.

COMMENT: The section requires a detailed timetable for units to be provided. The requirement is excessive, as the obligation only arises when certificates of occupancy are issued. The requirement for a detailed timetable, when it is unknown when certificates creating the obligation are to be issued, creates an impossible task designed to allow objectors or others to engage in mischief by attacking a municipal plan for a lack of a detailed timetable. The

regulations need to recognize that the plan is only a plan, and the obligation is created when the certificates of occupancy are issued.

RESPONSE: The Council does not agree with the commenter that the requirement for a detailed timetable is excessive. A timetable for implementation is fundamental to any realistic and meaningful Fair Share Plan. However, in recognition of the complexity of some affordable housing mechanisms, such as redevelopment and 100 percent affordable developments, the Council has included provisions allowing the municipality to submit documentation in accordance with a detailed implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4, subject to review and approval by the Council. The Council will closely monitor the implementation schedule to ensure that the Fair Share Plan continues to present a realistic opportunity.

N.J.A.C. 5:97-3.2(a)4iii

COMMENT: If a municipality proposes a municipally-sponsored or 100 percent affordable housing program to address a future anticipated affordable housing obligation that may be generated after the first plan review per N.J.A.C. 5:95-10, what documentation or information, if any, must be provided at the time of petition?

RESPONSE: The documentation required at the time of petition for a municipally-sponsored or 100 percent affordable housing is dependent on the phasing of the development. If such development is addressing a municipality's fair share obligation accruing from growth anticipated through the first plan review by the Council (pursuant to N.J.A.C. 5:96-10), all documentation required under N.J.A.C. 5:97-6.7(d) is to be submitted at the time of petition. If it is scheduled for construction after the first plan review, the documentation may be submitted in accordance with a detailed implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4, but no later than two years prior to the scheduled implementation of the mechanism.

N.J.A.C. 5:97-3.2(a)5

COMMENT: This regulation does not provide any deadline by which the deferred information has to be submitted and, as with N.J.A.C. 5:97-3.2(a)3, does not place a check on municipal discretion because towns with an RDP could simply delay the "scheduled implementation of the mechanism." This regulation is thus also unconstitutional because it places too much discretion in municipalities that have demonstrated their willingness to exclude.

RESPONSE: The rule will be amended in the near future to include a deadline. The commenter should also note that if land is a scarce resource, then phasing is not permitted unless the municipality demonstrates that the mechanism(s) does not rely upon the availability of vacant land or takes appropriate measures to reserve scarce resources that may be essential to implement the mechanisms that rely on the availability of vacant land.

N.J.A.C. 5:97-3.2(a)5ii

COMMENT: COAH should recognize that the imposition of scarce resource restraints and any other "appropriate measure to reserve scarce resources" may have the effect of discouraging growth and maintaining the status quo while municipalities proceed at a snail's pace in meeting their affordable housing obligations. A town that wants no growth would like nothing more than an order from a state agency saying that it cannot grow. This keeps developers at bay and pushes off hard decisions for another day. In light of this, what will COAH do to ensure that "measures to reserve scarce resources" do not become another tool in the pocket of municipalities that do not want to grow?

RESPONSE: The commenter has misinterpreted this provision, which refers to the timing for submission of documentation by a municipality with insufficient vacant land that has been granted or is seeking a vacant land adjustment or a growth projection adjustment. The phrase "appropriate measures to reserve scarce resources" does not in this context refer to the Council issuing an order to restrain scarce resources generally but rather to the vacant land municipality. Such municipality must submit all documentation required for its affordable housing mechanisms at the

time of petition unless it demonstrates that the mechanism(s) do not rely upon the availability of vacant land or takes appropriate measures to reserve scarce resources. The provision does not in any way relieve a municipality of its affordable housing obligation.

N.J.A.C. 5:97-3.2(a)8

COMMENT: A municipality must document that sewer and water capacity for its entire fair share obligation must be set forth in the petition. If sewer and water capacity are not available, then the municipality must document the steps it will take to provide the same, again for its entire obligation. This mandate again creates the self-fulfilling prophecy. If the municipality is required to provide sewer and water capacity for its entire obligation there again is created a self-fulfilling prophecy, with the underlying theory being that every piece of vacant developable land in this state should be developed.

RESPONSE: The Appellate Court, in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1, *certif. denied*, 192 *N.J.* 71 (2007), ruled that the growth share methodology, while constitutional, must contain a sufficient check on municipal discretion in adopting zoning. Therefore, the municipality must provide a realistic opportunity for the provision of affordable housing opportunities to address its projected growth, even if actual growth is less than projected growth. Further, a municipal Fair Share Plan must present a realistic opportunity for the provision of affordable housing, which is largely dependent on the availability of sewer and water capacity. Therefore, the Council cannot grant substantive certification without some demonstration that adequate sewer and water capacity is available or planned. The Council does understand, however, that municipalities may not be able to demonstrate availability of sewer and water capacity at the time of petition. For that reason, the rules now provide for the phasing of some affordable housing mechanisms, such as municipally-sponsored construction and redevelopment, in accordance with an implementation schedule that sets forth a detailed timetable for units to be provided within the period of substantive certification and for the submission of all information and documentation required.

COMMENT: The requirement at N.J.A.C. 5:97-3.2(a)8 leaves little guidance to municipalities without adequate water or sewer capacity as to how they should approach a plan of compliance with a projection of growth that cannot be accommodated because of a lack of water or sewer. Please provide guidance on what a municipality without adequate water or sewer capacity is supposed to do to address the projected obligation.

RESPONSE: There are several affordable housing mechanisms available to all municipalities that do not involve inclusionary zoning or necessitate the development of vacant land. These include an accessory apartment program, a market to affordable program, supportive and special needs housing, regional contribution agreements, an affordable housing partnership program, and extension of expiring controls. In addition, bonuses for rental units and very low-income housing are also available. Other innovative approaches meeting the Council's basic requirements for the provision of affordable housing will also be considered by the Council. To clarify the intent of N.J.A.C. 5:97-3.13(a)3, a future rule amendment will add definitions of "sewer capacity" and "water capacity," and the provision will be revised to reference them. The definitions recognize on-site facilities, thereby addressing situations in which municipalities must rely on development on septic systems. In a future amendment, the Council will strengthen its rules to require that clustering, lot size averaging and/or attached housing be permitted in inclusionary zones. The Council will also amend its rules to provide for durational adjustments in the third round. However, the commenter should note that durational adjustments are granted on a site specific basis and only in cases where water and sewer capacity is expected to be made available in the near future. The Council expects municipalities to see center designation, when appropriate, if needed to obtain sewer. The vacant land development capacity analysis prepared by COAH's consultants is an estimate of the maximum build-out potential of individual municipalities utilizing statewide spatial and other data. This analysis did not factor in potential water and wastewater capacity issues at the local level. Over the course of several meetings and discussions with the N.J. Department of Environmental Protection, they identified several wastewater treatment facilities that had current capacity constraints, others where expansion might be constrained in the future because of discharge stream conditions, and others that would have little or no problem with future expansions. Efforts were described as being underway to resolve several of the largest current capacity problems through repairs and

improvements to old and damaged collection systems, upgrades and/or expansions of the sewage treatment plants themselves. These large investments will take several years to produce results, but when completed the facilities would be able to meet projected build-out demand. Several other facilities could reach capacity over the near term if historical growth rates continue, and they will likely require costly upgrades in treatment technology, use of distributed treatment works, consideration of beneficial gray water reuse and other alternatives to meet long-term projected demand. Funds could be available through the New Jersey Environmental Infrastructure Trust, which has provided more than $ 4.3 billion in low interest long-term loans over the past 20 years to fund drinking water, wastewater and storm water projects. For these reasons, a more in-depth analysis is needed to determine the most cost effective and environmentally sound wastewater management alternative to meet potential long-term build-out demand including provision for affordable housing needs. A further assessment will then be required to determine whether those costs can be sustained by the existing and future users of those facilities, consistent with the notion of providing "affordable" housing. This assessment is required through the development and adoption of wastewater management plans under the pending Water Quality Management Planning (WQMP) Rules, N.J.A.C. 7:15-1. The pending WQMP Rules will require that each of the 21 counties in the State develop a comprehensive long-term wastewater and water management plan to replace the 190 plans now in use, the overwhelming majority of which are out of date. These plans will be required to address any inconsistencies between build-out demand versus treatment capacity and water availability. Affordable housing sites should be included in updated county wastewater management plans to be submitted to DEP in the spring of 2009. Ultimately, these plans will inform the vacant land and development capacity analysis prepared by COAH.

COMMENT: COAH should provide more guidance as to the steps necessary for a municipality to take to document sewer and water capacity, or lack thereof for proposed housing plan elements at the time of petition. This represents a substantial burden that should only be imposed in unique circumstances.

RESPONSE: In reviewing a municipality's Housing Element and Fair Share Plan, the Council's objective is to evaluate whether or not a potential site presents a realistic opportunity for the production of affordable housing. To that end, a municipality must demonstrate that sites designated to produce affordable housing are "developable" in that they have sufficient water and sewer capacity and are consistent with the applicable area wide water quality management plan or amendment thereto. The Council recognizes that in some cases a municipality may not be able to demonstrate sewer and water availability at the time of petition, in which case the municipality must indicate what steps will be taken to obtain sewer and water service necessary to accommodate proposed affordable housing mechanisms within the period of certification. The commenter should note that in the case of some affordable housing mechanisms, including proposed municipally sponsored and 100 percent affordable developments, supportive and special needs housing, assisted living residences, and redevelopment proposals, the documentation may be submitted in accordance with a detailed implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4, provided the municipality demonstrates at petition what steps it will take to obtain water and sewer capacity. To clarify the intent of N.J.A.C. 5:97-3.13(a)3, a future rule amendment will add definitions of "sewer capacity" and "water capacity," and the provision will be revised to reference them. The definitions recognize on-site facilities, thereby addressing situations in which municipalities must rely on development on septic systems. The Council will also amend its rules to provide for durational adjustments in the third round. However, the commenter should note that durational adjustments are granted on a site specific basis and only in cases where water and sewer capacity is expected to be made available in the near future.

COMMENT: Does the Council, in N.J.A.C. 5:97-3.2(a)8, require local governments to plan for water and sewer needs based upon the projections in Appendix F, where these projections are grossly excessive or otherwise unrealistic, local governments may be unable to gain Wastewater Management Plan approvals from NJDEP. The Council should require an updated and approved WMP to ensure capacity prior to requiring a municipality to plan for growth that may not be able to be accommodated.

RESPONSE: The provision to which the commenter refers is within a section entitled "Content of a Fair Share Plan" and requires a demonstration of existing or planned water and sewer capacity sufficient to accommodate all proposed affordable housing mechanisms. This section does not necessarily require water and sewer capacity to accommodate the growth projections in Appendix F. Affordable housing sites should be included in updated county

wastewater management plans to be submitted to DEP in the spring of 2009. Municipal Fair Share Plans will be due this December, before county plans are due, and COAH expects affordable housing sites to be included in county wastewater management plans through centers and cluster-based development, as appropriate.

N.J.A.C. 5:97-3.3

COMMENT: The rule proposal requires an affordable housing development with an odd-numbered affordable unit to be a low income unit. COAH should allow the odd-numbered unit to be affordable to a household earning 52 percent or 55 percent of median (the average rental or sales price required by COAH's rules) or require the municipality to provide a subsidy in order for the extra unit to be affordable to a low income household.

RESPONSE: The commenter should note that this provision regarding low/moderate income split was previously codified at N.J.A.C. 5:93-5.13 and represents the Council's historical policy with regard to low/moderate income split. The Council considers the policy successful and reasonable. The average rental or sales price refers to the average across all units. The Council does not believe it is necessary to require the municipality to provide a subsidy as such a subsidy may not be necessary to meet the rule requirement.

N.J.A.C. 5:97-3.4

COMMENT: Every municipality should have to provide rental housing, including family rental housing. Municipalities should not be able to transfer all rental housing via a RCA.

RESPONSE: This provision reflects the Council's historical policy with regard to the transfer of rental units via an RCA and remains unchanged. It is one of several mechanisms available to a municipality for meeting its rental obligation and is reflective of the fact that RCAs are a permitted mechanism for addressing the municipal fair share obligation.

COMMENT: The Council should revise the "realistic opportunity" language regarding construction of new rental units and instead establish a minimum 25 percent requirement that new housing units constructed under a municipality's Fair Share obligation be dedicated multi-family rental units. Additionally, greater emphasis should be placed on rentals for our growing workforce population, as defined as 80 percent to 120 percent of median. New Jersey has long faced a severe shortage in multi-family rental housing for our growing workforce, as municipalities have actively opposed the construction of new multi-family rental units. New Jersey Future notes that in the entire decade of the 1990s, two-thirds of New Jersey municipalities failed to issue even one building permit for new rental housing. Nearly one-quarter of all rental homes in New Jersey are located in eight municipalities, and over 50 percent of all rental homes are located in just 34 municipalities. This distinct over-concentration is far from wise housing policy, and COAH should use its authority to promote a fairer and more balanced distribution of rental housing opportunities for working families, young couples, and seniors.

RESPONSE: The "realistic opportunity" language to which the commenter refers is consistent with the Fair Housing Act (FHA) at N.J.S.A. 52:27D-311.a, which states: "In adopting its housing element, the municipality may provide for its fair share of low and moderate income housing by means of any technique or combination of techniques which provide a realistic opportunity for the provision of the fair share." For example, an accessory apartment program may be used to address a municipality's rental obligation. Such a program is considered to present a realistic opportunity but is not necessarily a "dedicated multi-family rental unit" at the time of municipal petition. With regard to the commenter's concern about workforce housing , the FHA defines low- and moderate-income housing as housing affordable to households with a gross household income less than 80% of the median gross household income for households of the same size within the housing region in which the housing is located. Therefore, the Council's rules are not applicable to households earning from 80 percent to 120 percent of median. However, the Council recognizes the importance of affordable rental housing and for that reason has included rental bonus provisions that provide an important incentive for creating rental housing. The Courts upheld the grant of rental bonus credits in *Calton Homes,*

Inc. v. Council on Affordable Housing, 244 *N.J. Super.* 438 (App. Div. 1990), *certif. denied*, 127 *N.J.* 326 (1991) and *In the Matter of Petition for Substantive Certification Filed by Freehold Township*, Docket No. A-2521-01T2 (decided October 23, 2003).

COMMENT: Towns should get credit for Low Income Housing Tax Credit (LIHTC) developments, and the rules should allow an exception from Uniform Housing Affordability Controls (UHAC) for all LIHTC projects with regard to low/mod split, rent stratification, range of affordability, and bedroom distribution. The Federal program addresses a rent structure which should be followed. The rules for the LIHTC program can vary on a yearly basis (due to state or Federal program requirements) and the COAH rules should encourage as much development with this federal resource as possible. Prior rules have included both exceptions for all LIHTC projects and only for tax exempt bond deals. If an exception from the split is permitted, the municipality should get credit as if the split were in effect.

RESPONSE: The Council intends to provide credit for LIHTC developments. The adopted regulations do not provide exceptions for low/mod split, rent stratification, range of affordability or bedroom distribution. Criteria for credit as it applies to Low Income Housing Tax Credit projects will be proposed in a future rule amendment.

COMMENT: The commenter supports the inclusion of rental housing as a portion of a municipal housing plan, but again these units must be provided where determined by the municipality to be appropriate and should not be capped at 25 percent.

RESPONSE: The Council appreciates the commenter's support. The 25 percent rental requirement referenced by the commenter is a minimum, not a maximum, requirement. The municipality is given broad discretion in choosing how to meet its rental requirement, provided that the mechanisms chosen provide a realistic opportunity for the provision of affordable rental housing.

COMMENT: Clarification is needed to recognize manufactured housing separate and distinct from the context of the "rental" provision. Manufactured housing may be owned by the occupant, unlike an apartment rental. In the land leased community the term rent applies to the money paid for the pad space, not the home. The owner should be afforded the income percentages that apply to ownership, not rental.

RESPONSE: The Council appreciates the commenter's suggestion. As previously mentioned, the Council will propose amendments in the future to address the unique concerns of the manufactured housing community.

COMMENT: Several commenters noted that the minimum requirement of 50 percent family rental housing is a long overdue, positive change in the rules.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-3.4(b)

COMMENT: "At least 50 percent of the rental housing obligations addressed within a municipality shall be met with family housing in the Fair Share Plan." N.J.A.C. 5:97-3.6(a)4. In order to receive the one-for-one bonus, "a minimum of 50 per cent of the rental housing requirement has been addressed with family rental units provided pursuant to N.J.A.C. [5:97]-6.4, 6.5, 6.6, 6.7, 6.9, 6.13 or 6.15." At N.J.A.C. 5:97-3.10(b)3, "The rental requirement for the growth share obligation shall be based on the following formula: Rental Requirement = 25 per cent (Growth Share Obligation)." Taken together, these would seem to indicate that the one-for-one bonus for family rental units would become applicable once the family rentals provided reached 12.5 percent of the total growth share obligation (0.5 x 0.25). Is this so? Most people think the threshold is 25 percent.

RESPONSE: In the example provided by the commenter, the rental requirement is 25 percent of the growth share obligation. The municipality would be eligible for rental bonuses if 1) it has provided more rental units than the 25 percent minimum rental requirement, 2) at least half of that minimum rental requirement has been addressed with

family rental units, and 3) one of the conditions under N.J.A.C. 5:97-3.6(a)3 has been met.

COMMENT: Please clarify if the 50 percent family housing standard will be applied retroactively to the prior round rental units, including the rental unit obligation. If this standard will be applied in a retroactive fashion, how can such an approach be justified where municipalities created affordable rental opportunities consistent with prior round rules but which do not meet this new standard?

RESPONSE: The 50 percent family housing requirements at N.J.A.C. 5:97-3.9 and 3.4(b) are both intended by the Council to apply only to the third round projected growth share obligation. The rule will be amended in the near future to clarify the Council's intent.

N.J.A.C. 5:97-3.4(c)

COMMENT: This listing of acceptable ways to address a rental obligation should include a development application approval wherein the developer has committed to develop affordable rental housing." To require an agreement with such a developer would be unnecessary.

RESPONSE: The Council will amend the rule in the near future to include the commenter's suggestion.

COMMENT: Farm labor housing, which has a 30-year deed restriction, should be added to the list of unit types eligible to satisfy the rental obligation. The households occupying these units are almost exclusively low- or moderate-income households. The municipality should have the ability to capture affordable housing credit when such a unit is deed restricted to low- or moderate-income households. The purpose of the substantive rules, for municipalities to provide a fair share of affordable housing, will be advanced by including this unit type.

RESPONSE: The New Jersey Supreme Court's *Warren* decision does not generally allow preferences for a targeted restricted population. However, the Council recognizes that because this type of housing is specifically designed for farm laborers and is so integrated within the commercial farm that it could not be sold or rented as market rate housing. Therefore, under the proposed rules, farm labor housing does not incur a growth share if constructed on a commercial farm and classified as R2, R3, or R5 by the Uniform Construction Code.

COMMENT: COAH should add extensions of controls (N.J.A.C. 5:97-6.14) on rental units (both family and senior rentals) to this listing of acceptable ways to address a rental obligation.

RESPONSE: The Council agrees with the commenter and will amend the rule in the near future accordingly. Age-restricted rentals are not precluded from addressing the rental obligation but are subject to any applicable age-restricted caps.

COMMENT: The commenter supports the inclusion of "assisted living residences" as a possible component a municipality may include in their fair share rental obligation plan since many of these providers offer an array of critical health and personal care services allowing elderly residents to live more independently in a "homelike" environment. For similar reasons, the commenter recommends that "comprehensive personal care homes" and "residential health care facilities" be added to this list since these residences also allow for the provision of licensed health care services to elderly individuals, including many with low or fixed incomes, allowing them to more independently "age in place" for a longer period of time in a "homelike" setting.

RESPONSE: The comment is appreciated. A comprehensive personal care home is a type of assisted living residence and is considered an assisted living residence. Residential health care facilities are listed under supportive and special needs housing.

N.J.A.C. 5:97-3.4(c)6

COMMENT: N.J.A.C. 5:94-3.4(c)6 stipulates that there shall be developers agreements for affordable housing as rentals in an inclusionary redevelopment area. Redevelopment area projects present many challenges. The imposition of a rental requirement on redevelopment areas, which are often a tenuous prospect, only serves to potentially discourage their prospects. No additional rental requirement should be imposed.

RESPONSE: The commenter has misinterpreted this provision, which does not impose a rental requirement on redevelopment areas, but rather, presents an option that may be used by a municipality to address its rental housing requirement. If a municipality chooses to address its rental requirement within a redevelopment area, it must do so in the form of an agreement with the redeveloper.

N.J.A.C. 5:97-3.4(c)7

COMMENT: N.J.A.C. 5:97-3.4(c)7 requires an RCA project plan to create or reconstruct new rentals in the receiving community. As noted above, communities have a minimum rental obligation and restricting RCAs to rentals is likely to further constrain municipal options in formulating a workable fair share plan.

RESPONSE: The commenter has misinterpreted this provision, which does not impose a rental requirement on RCA project plans, but rather, presents an option that may be used by a municipality to address its rental housing requirement. If a municipality chooses to address a portion or all of its rental requirement through the transfer of units via an RCA, the RCA Project Plan must provide for the creation or reconstruction of new rental units in the receiving municipality.

N.J.A.C. 5:97-3.4(d)

COMMENT: The rule should provide some flexibility in the timing of production of affordable rental units, compared with affordable for-sale units. It may not be realistically possible to address the rental obligation at the same sequence as the affordable for-sale units.

RESPONSE: The delivery of rental units, as with the provision of affordable housing generally, must be in proportion to actual growth share measured pursuant to N.J.A.C. 5:97-2.5, or in accordance with the municipality's detailed implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4, which must demonstrate "realistic opportunity" as defined under N.J.A.C. 5:97-1.4, that is, a reasonable likelihood that the affordable housing in a municipality's Housing Element and Fair Share Plan will actually be constructed or provided during the 10-year period of certification. To address the commenter's concern, the rule will be amended in the near future to include a reference to the implementation schedule option. The Council will closely monitor the implementation schedule to ensure that the Fair Share Plan continues to present a realistic opportunity.

COMMENT: The proposed rule bases the municipal rental obligation on actual growth share. However, the rule requires municipalities to plan for its housing obligation based on the greater of the projected growth share or actual growth share. COAH should clarify that the rental obligation is based on the greater of projected growth share or actual growth share.

RESPONSE: The municipal rental obligation is based on the projected growth share as calculated in formulas contained in N.J.A.C. 5:97-3.4. The delivery of the rental units, however, as with the provision of affordable housing generally, must be in proportion to actual growth share measured pursuant to N.J.A.C. 5:97-2.5, or in accordance with the municipality's detailed implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4. The rule will be amended in the near future to include a reference to the implementation schedule and to clarify that the implementation schedule must demonstrate "realistic opportunity" as defined under N.J.A.C. 5:97-1.4, that is, a reasonable likelihood that the affordable housing in a municipality's Housing Element and Fair Share Plan will actually be constructed or provided during the 10-year period of certification. The Council will closely monitor the implementation schedule to ensure that the Fair Share Plan continues to present a realistic opportunity.

COMMENT: N.J.A.C. 5:97-3.4(d) stipulates that rental obligation can change with growth share monitoring. This will require revision to the housing plan. The municipality should be able to rely on the municipal projection for a period longer than the biennial monitoring. The period should extend for at least halfway through certification.

RESPONSE: The municipal rental obligation is based on the projected growth share obligation as calculated in formulas contained in N.J.A.C. 5:97-3 and does not change at biennial monitoring. The delivery of the rental units, however, as with the provision of affordable housing generally, must be in proportion to actual growth share measured pursuant to N.J.A.C. 5:97-2.5, or in accordance with the municipality's detailed implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4, which must demonstrate "realistic opportunity" as defined under N.J.A.C. 5:97-1.4, that is, a reasonable likelihood that the affordable housing in a municipality's Housing Element and Fair Share Plan will actually be constructed or provided during the 10-year period of certification. The rule will be amended in the near future to include a reference to the implementation schedule option. The Council will closely monitor the implementation schedule to ensure that the Fair Share Plan continues to present a realistic opportunity.

N.J.A.C. 5:97-3.5

COMMENT: The rental bonus credits offered by COAH for housing activities that are always provided as rentals, such as group homes, Low Income Housing Credit-financed developments, and HUD-subsidized Section 202 Supportive Housing for the Elderly, and that are provided without any market-rate units, dilute the constitutional housing obligation and are contrary to COAH's original intent in first adopting the rental bonus credits rule in 1986: "In developing this provision [the rental bonus credit], the Council carefully considered the need for rental housing and the best means of addressing this need. The Council decided that the best way to achieve the goal of providing rental housing for lower income households was to provide a system of incentives. The Council believes that it has provided such incentives to developers by presumptively requiring higher densities and lower set-asides for rental housing as compared to purchase housing. Since the 15 percent set-aside for rental housing is one-third less than the 20 percent set-aside for purchase housing, such a provision could likely result in one-third more total housing being constructed in a municipality as a result of rental housing. As an incentive for municipalities to cooperate with rental housing efforts, the Council decided to offer this increased credit so that rental housing could be constructed in a community with no greater impact than purchase housing. The Council views the need for rental housing important enough to provide for this one and a third credit." 18 N.J.R. 2443; New Jersey Register, December 15, 1986.

RESPONSE: The Council has historically granted rental bonuses to the affordable rental housing types mentioned by the commenter and believes that it is reasonable to continue doing so. Further, the Courts upheld the grant of rental bonuses in *Calton Homes, Inc. v. Council on Affordable Housing*, 244 *N.J. Super.* 438 (App. Div. 1990), *certif. denied*, 127 *N.J.* 326 (1991) and *In the Matter of Petition for Substantive Certification Filed by Freehold Township*, Docket No. A-2521-01T2 (decided October 23, 2003).

COMMENT: The proposed rule states that a rental bonus may be granted for the 1987 through 1999 housing obligation if it has been constructed. COAH should clarify that a municipality may no longer receive a rental bonus for the 1987-1999 housing obligation if the rental unit was not constructed before a date certain.

RESPONSE: The commenter has misinterpreted the provision, which was intended to mean that prior cycle credits (built prior to December 15, 1986) are not eligible for rental bonuses. The Council will clarify in a future rule amendment that rental units not yet constructed may be eligible for bonuses if they still present a realistic opportunity pursuant to N.J.A.C. 5:97-6.5.

COMMENT: A municipality is allowed to take a rental bonus credit for rental units created after December 15, 1986, provided the unit is subject to a 30-year deed restriction. Up until now, COAH regulations required 15-year affordability controls on rental units, not 30 years. It would appear the provision would serve to deny any rental bonus for prior activity unless the restriction was for a term not authorized by COAH. Also, the term "controls on affordability" is not defined. Practice has been that it is a deed restriction, but the term should be broadened to cover

mortgage restrictions as in Section 8 housing, and other forms of recorded restrictions by agreement or otherwise. It should make no difference that the affordability control is a deed or other restriction of record.

RESPONSE: The commenter is incorrect. The affordability controls on rental units were initially 20 years (N.J.A.C. 5:92-12.10(c)) and extended to 30 years in N.J.A.C. 5:93. The Council believes that rental bonuses should be available only to prior round rental units that are actually in existence and occupied. Controls on affordability are detailed in the Uniform Housing Affordability Controls (UHAC) as referenced in N.J.A.C. 5:97-9.1 of the rules and promulgated by the N.J. Housing and Mortgage Finance Agency, not COAH. The Council will forward the comments to the Agency, who may address the commenter's suggestion in a future rule amendment.

COMMENT: The commenter proposes that constructed affordable rental units receive a two for one credit reflective of the inherent economic hurdles to developing rental housing in the State. This two for one credit is particularly important in areas being designated as "in need of redevelopment or rehabilitation."

RESPONSE: The Council believes that the granting of one rental bonus for an eligible family rental unit (and one-fourth rental bonus for eligible supportive and special needs housing) over and above the 25 percent minimum rental housing requirement is an adequate incentive for creating rental housing and any additional bonus would delete the affordable housing need. Furthermore, the Courts upheld the grant of rental bonus credits in *Calton Homes, Inc. v. Council on Affordable Housing,* 244 *N.J. Super.* 438 (App. Div. 1990), *certif. denied,* 127 *N.J.* 326 (1991) and *In the Matter of Petition for Substantive Certification Filed by Freehold Township,* Docket No. A-2521-01T2 (decided October 23, 2003). The rules will be amended in the near future to provide bonuses for affordable housing within redevelopment areas.

COMMENT: The commenter applauds the Council's clear statement of eligibility of bonus credits for units "created in the municipality and occupied on or after December 15, 1986." The commenter believes that this revision from the prior rule clarifies what was an uncertain, but albeit clear, intent that rental bonus credits only be applied for prior round rental units that are actually in existence and occupied.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The new regulations should mandate that at least one-third of all housing produced be made affordable to very-low-income households (those below 30 percent of median), and that no bonus credits should be allowed for the production of these or any rental units. The State's Consolidated Plan FY 2007 Action Plan (Housing Needs Data table) indicates that nearly 370,000 households in New Jersey fall into this category (approximately 12 percent of all households in the State), and that 77.5 percent of them have housing problems. Many of these households are comprised of the disabled, other Social Security income (SSI) recipients and people on fixed incomes. Many are headed by those employed at critical low-wage jobs such as home health aides, child care workers and home-health aides. Since these families undoubtedly have the greatest need, municipalities should be required to develop and construct decent, affordable housing for them, without resort to artificial enticements (bonus credits) that serve only to reduce the amount of housing available to the most vulnerable among us.

RESPONSE: The Council recognizes the need for housing that is affordable to low and very low income households and has included several requirements and incentives to promote such housing. These include the low/mod split and very-low income requirement for rental developments required by UHAC, as referenced in N.J.A.C. 5:97-9.1; the very low income bonus at N.J.A.C. 5:97-3.7; and the affordability assistance requirement for very low income households at N.J.A.C. 5:97-8.8. Under the Fair Housing Act, every municipality in New Jersey has a constitutional obligation to provide a realistic opportunity for the construction of affordable housing, and therefore these incentives are available to any municipality under the Council's jurisdiction. In addition, the rules will be amended in the near future to establish minimum presumptive densities by planning area and opportunities for municipalities to address very low income households through inclusionary zoning.

N.J.A.C. 5:97-3.5(a)

COMMENT: The rule provides that there shall be no rental bonus for rental units in excess of prior round obligation. In contrast, the rules do provide a rental bonus if rentals are in excess of the third round obligation How can rentals provide a bonus in one round and not a prior round? A rental unit above the minimum obligation is the same type of housing unit whether it's in the prior round or the third round. Therefore, the third round rules call for the same type of housing is accounted for two different ways, bonus and no bonus. This is not consistent.

RESPONSE: The commenter is correct in noting that the criteria for granting rental bonuses have changed since the prior round. During the second round, municipalities received bonuses on rental units up to the rental requirement. The Council has determined that providing rental bonuses in excess of the rental obligation will better foster the production of rental housing, and thus municipalities now receive a bonus only when exceeding their rental obligation. However, in the interest of treating all municipalities equitably, the Council deems it appropriate to continue applying the prior round standard to all rental units addressing the prior round.

COMMENT: COAH's rule on rental bonus eligibility for the prior round should be revised to reflect COAH's prior acceptance of the renewable 20-year capital funding agreements for group homes by the Division of Develpmental Disabilities (DDD) within the Department of Human Services (DHS) as meeting the intent of the 30-year affordability control period and, thus, eligible for a prior round rental bonus.

RESPONSE: The Council does not believe that a change is necessary; however, the Council will honor its past practice in recognizing 20-year capital funding agreements for group homes by DDD within DHS as meeting the intent of the 30-year affordability control period in order to receive rental bonuses.

COMMENT: Eliminate the last sentence: "No rental bonuses shall be granted for the rental units in excess of the prior round rental obligation." Municipalities that have produced a level of affordable housing in excess of the prior round rental obligation should be entitled to carry those credits into the third round. This is the type of provision that is perceived as punitive to the municipality that has conformed to the rules and cannot take full advantage of a benefit that should be derived from more than effectively addressing the prior affordable housing production.

RESPONSE: The commenter has misinterpreted the provision, which applies to rental bonus eligibility for units addressing the prior round obligation, not the rental housing requirement. A future rule amendment will clarify that prior round rental units in excess of the prior round rental obligation can be used to satisfy the growth share rental obligation; however, these units are not eligible for rental bonuses.

N.J.A.C. 5:97-3.6

COMMENT: Only units constructed after 1999 are eligible for credit towards the growth share, which means there will be virtually no carryover of credits from prior rounds to the third round.

RESPONSE: The commenter is incorrect. The restriction noted by the commenter is only for rental bonuses for units built after June 6, 1999. The original unit may be eligible for credit against the growth share obligation. The Council will amend the rule in the future to address the commenter's concern.

COMMENT: Please clarify how a municipality should calculate rental bonuses. If a municipality with a third round obligation of 100 units creates 25 senior rentals and 13 family rentals, how many, if any, of the family rentals are entitled to a rental bonus? Would additional family rentals (above the 13) qualify for the two for one rental bonus?

RESPONSE: In this example, the rental obligation would be 25 units. In order for the municipality to receive any rental bonuses, the entire rental obligation of 25 units must be met, at least 13 of which must be family rentals. Therefore, although in this example the rental obligation has been met (13 family and 12 senior), none of the family rentals would be eligible for a rental bonus. Additional family rentals above the 13 would be eligible for rental bonuses.

COMMENT: The commenter supports the regulations regarding the applicability of rental bonus credits for Growth Share Obligations as set forth in this proposed rule.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: Should not this section contain a provision for rental bonus credit for age restricted units above the 25 percent rental obligation? The commenter did not see a provision for the 1.33 rental bonus credit for age restricted units. If it is contained in the regulations, please confirm the location. If not, is there some reason why COAH is no longer promoting rental housing for seniors?

RESPONSE: The 1.33 rental bonus to which the commenter refers applies to rental units addressing the prior round obligation and is found at N.J.A.C. 5:97-3.5(b). Age-restricted rentals are still eligible for rental bonuses addressing the growth share obligation under the proposed rules; however, N.J.A.C. 5:97-3.6(a)4 requires at least 50 percent of the rental housing requirement be addressed by family units. The Council wishes to provide a balance of housing opportunities to all segments of the population.

COMMENT: The calculation of the rental bonus should be revised. Each affordable rental unit should be entitled to 1.6 credits towards the municipality's growth share obligation. In addition, the developer of affordable rental units should be entitled to the bonus credits of developing affordable rental units. As the regulations are currently drafted, a municipality obtains rental bonus credits for providing rental bonus credits in excess of its rental growth share obligation, which is 25 percent of its growth share obligation. As development occurs in the municipality, the actual growth share obligation increases and its rental bonus obligation increases. Therefore, it is impossible for a municipality to know whether it will be entitled to any rental bonus credits until 2018, the end of the Round Three period, and a municipality can never plan on its rental bonus credits in developing and implementing its Housing Element and Fair Share Plan. The 1.6 credits for each affordable housing rental unit is proposed, because a municipality with an actual growth share obligation of 100 units, which was based solely on the development of rental apartment communities, may satisfy its entire actual growth share obligation by the development of only 62.5 affordable rental units according to the proposed regulations, and 62.5 affordable rental units multiplied by 1.6 credits per unit results in 100 affordable housing credits. Only if the developer receives the benefit of the bonus rental credit will there be an incentive for the development community to build affordable rental units. These two changes to rental bonuses will provide certainty to both the developer and municipality regarding the calculation of the rental bonus credits. They would also further COAH's goal of facilitating the development of rental affordable units.

RESPONSE: A municipality's rental obligation is based on a municipality's projected growth share obligation, and rental units in excess of that rental obligation are eligible for rental bonuses. For purposes of planning and implementing its Fair Share Plan, a municipality can rely on the number of rental bonuses calculated using the municipality's rental obligation as long as it is in conformance with the timetable for production of units submitted in accordance with N.J.A.C. 5:97-3.2(a)4. Concerning the need to grant the benefit of the rental bonus to the developer, the rental obligation is the responsibility of the municipality, and, therefore, the rental bonus also belongs to the municipality. However, to encourage the development of rental units, a municipality may offer incentives to a developer for doing so in addition to the compensatory benefits that the Council has set forth in this rule proposal. The Council has also introduced some flexibility with regard to rental projects within urban areas. The Council's past experience indicates that a 15 percent set-aside in conjunction with a minimum 10 units/acre density has proven to be a viable tool for encouraging the production of affordable rental housing. However, the success of this approach in creating a realistic opportunity for the production of affordable rental units was due in part to the level of density increase typified in lower density suburban settings. The Council also recognizes that the economics of construction costs in higher density settings typified in urban markets render the use of density increases, especially when the minimum density is lower than the existing density, less effective in establishing viable economic incentives that will result in an increased supply of affordable rental units. Therefore, some flexibility with regard to set-aside, growth share generation, and affordability requirements in these areas is warranted. The rule will be amended in the near future to permit a 15 percent set-aside for rental developments in workforce housing census tracts, defined as census tracts where 15 percent or more of the

population falls below the Federal poverty level, and to permit an exclusion of the additional market rate rentals in such developments from a municipality's actual growth share, as calculated under N.J.A.C. 5:97-2.5. In addition, the Council will consider future rule amendments to address the affordability average of rentals in urban areas.

COMMENT: The Council should increase the bonus for rental family units to three, up from the current proposal of two. Again, the severe need for new workforce rental housing units in New Jersey, and the need for greater incentives for new units to be brought to the marketplace, should sufficiently motivate the Council to act in the affirmative.

RESPONSE: The Council believes that the granting of one rental bonus for an eligible family rental unit (and one-fourth rental bonus for eligible supportive and special needs housing) over and above the 25 percent minimum rental housing requirement is an adequate incentive for creating rental housing and any additional bonus would delete the affordable housing need. Furthermore, the Courts upheld the grant of rental bonus credits in *Calton Homes, Inc. v. Council on Affordable Housing,* 244 *N.J. Super.* 438 (App. Div. 1990), *certif. denied,* 127 *N.J.* 326 (1991) and *In the Matter of Petition for Substantive Certification Filed by Freehold Township,* Docket No. A-2521-01T2 (decided October 23, 2003).

COMMENT: The proposal, carried over from the 2004 rules, to allow rental bonuses only for rental affordable units in excess of the municipal growth share rental obligation is an improvement over the rental bonuses offered by COAH under its First and Second Round Rules, but what is the purpose of these bonuses, which the rules authorize for housing activity that is always provided as rentals, such as permanent supportive housing and supportive and special needs housing. What is the rationale for diluting the constitutional housing obligation?

RESPONSE: The Council appreciates the commenter's support. As in the past, the Council believes it is reasonable to grant rental bonuses for affordable housing types such as permanent supportive housing and supportive and special needs housing. However, in order to promote family rental housing, the Council now requires that such bonuses be granted only when at least 50 percent of the rental housing requirement has been addressed with family rental units.

N.J.A.C. 5:97-3.6(a)

COMMENT: Why is there a difference in the level of rental bonus credit between "permanent supportive housing" and "supportive and special need housing"?

RESPONSE: The Council believes it is appropriate for supportive and special needs housing provided pursuant to N.J.A.C. 5:97-6.10, where the unit of credit is the bedroom, to receive one-quarter rental bonus. Permanent supportive housing, where the unit of credit is the unit, is eligible for one rental bonus. Permanent supportive housing provides housing for households that are primarily family units, whereas supportive and special need housing provides housing for households that are primarily single persons that are placed into bedrooms contained in larger structures. The rule will be amended in the near future to better distinguish between the two types of housing.

COMMENT: Rental units created and occupied in the municipality before June 6, 1999 should be eligible for bonus credits under the growth share obligation. If the units themselves can be counted towards the growth share obligation, then if the rental obligation is satisfied, it does not make sense to exclude those units from the bonus credits. Rules from the previous rounds stated that any surplus generated from earlier affordable housing activity could be applied to future obligations. The exclusion of these units from bonus credits seems to contradict those earlier rules.

RESPONSE: To ensure that only units built during the third round period are eligible for rental bonuses toward the growth share obligation, the new rule requires that a unit receiving a bonus toward the growth share obligation must have been built on or after June 6, 1999. Rental bonuses are designed to encourage the creation of new affordable rental units. The Council believes that existing affordable rental units created and occupied before June 6, 1999, and addressing the growth share obligation, should not be eligible for rental bonuses but are appropriately granted credit toward growth share.

COMMENT: There is no need for a bonus for supportive or special needs housing, because municipalities already prefer such housing because it does not generate schoolchildren. Such a bonus will further dilute the need numbers.

RESPONSE: The Council believes that affordable housing should serve all segments of the population and that incentives are needed to encourage supportive and special needs housing to ensure a balance of housing opportunities. Supportive and special needs housing is an affordable mechanism that is available to municipalities for addressing their rental housing requirement, and therefore the Council believes it should also be eligible for rental bonuses if the conditions of N.J.A.C. 5:97-3.5 or 3.6 are met.

N.J.A.C. 5:97-3.6(a)1

COMMENT: COAH should enable accessory apartments with 30-year controls to be eligible for rental bonuses.

RESPONSE: It has been the Council's experience that accessory apartment programs with 30-year controls have not successful. If, however, a municipality is successfully in producing accessory apartments with 30-year controls, the Council will consider rental bonuses for those units.

COMMENT: COAH should enable extensions of controls on family rental units to be eligible for rental bonuses.

RESPONSE: The Council does not agree with the commenter that extensions of expiring controls on family rental units should be eligible for rental bonuses. Rental bonuses for the growth share obligation are designed to encourage the creation of new affordable rental units and should not be granted to rental units that have already been constructed. However, the Council has added extensions of controls on family rental units to the list of mechanisms that can be used to address the rental housing requirement.

N.J.A.C. 5:97-3.6(a)1ii

COMMENT: Per N.J.A.C. 5:97-3.6(a)1ii, a municipality may lose the rental bonus if units are not constructed within the time period per conditions of substantive certification. The credits may also be revoked if the developer abandons development. Under the prior round rules, municipalities received an acknowledgement that they had zoned for affordable housing, whether or not the units were built. COAH should reaffirm this policy.

RESPONSE: The commenter is referring to a provision that pertains to rental bonuses and the conditions under which rental bonuses may be lost. It does not apply to zoning, which is valid as a mechanism for addressing a municipality's affordable housing obligation for as long as it is in place, is consistent with COAH's rules, and continues to present a realistic opportunity.

N.J.A.C. 5:97-3.6(a)2

COMMENT: The third round N.J.A.C. 5:97-3.6(a)2 gives 1.25 credits per bedroom for supportive and special needs housing which is acceptable, but why are the credits different than for rental units which get a 2:1 bonus above the obligation?

RESPONSE: The Council believes that the use of rental bonuses is an important incentive for creating rental housing. Rental units available to the general public and permanent supportive housing, where the unit of credit is the unit, are eligible for two units of credit. The Council believes it is appropriate for supportive and special needs housing provided pursuant to N.J.A.C. 5:97-6.10, where the unit of credit is the bedroom, to receive 1.25 units of credit. Permanent supportive housing provides housing for households that are primarily family units, whereas supportive and special need housing provides housing for households that are primarily single persons that are placed into bedrooms contained in larger structures. The rule will be amended in the near future to better distinguish between the two types of housing.

N.J.A.C. 5:97-3.6(a)3ii

COMMENT: What constitutes developer abandonment of the development? Developments commonly change hands (for example, development approval is gained by one entity and sold to another). Is that abandonment? As long as the zoning and the development approval remain valid, so should the rental bonus associated with the development. The COAH rules should state that.

RESPONSE: The Council will amend the rule in the near future to address the commenter's concern.

COMMENT: The rule stipulates that a municipality may lose the rental bonus if units are not constructed within the time per conditions of substantive certification. The credits may also be revoked if the developer abandons development. Why if a developer abandons the project is the burden on the municipality to find a solution, and find one during the period of certification? Why is there no penalty to the developer for choosing not to proceed?

RESPONSE: The *Mount Laurel* obligation, as a constitutional obligation, ultimately resides with the municipality, not the developer. Municipalities are expected to include within their Fair Share Plan mechanisms that offer the greatest likelihood of actually producing affordable housing, and to play a supportive role in assuring that they do. If a municipality is relying on bonus credits to address its affordable housing obligation, the units generating the bonuses must be constructed before the period of substantive certification is over. A municipality may amend a plan to replace a development that is not moving forward with another development that is creating units that are eligible to receive rental bonuses.

COMMENT: COAH provides conditions as to when it will grant third round rental bonuses. COAH should eliminate the phrase "if the preliminary or final approval is no longer valid" as it is confusing in light of a municipal board's ability to grant extensions according to the MLUL. Even if the ability to grant further extensions has expired, a developer is still able to build the previously approved affordable rental units.

RESPONSE: The Council does not believe that this change is necessary. If a municipality grants extensions pursuant to the MLUL, then the approvals would still be valid. In addition, some municipalities have adopted a "sunset" provision of the ordinance regarding subdivision and site plan approvals. If they adopt a sunset provision, the approval will expire once all the extensions have expired.

N.J.A.C. 5:97-3.6(a)4

COMMENT: COAH should consider extensions of controls on family rental units as a means to address 50 percent of the town's rental obligation with family rental units and should be added to this listing of other eligible family rental options.

RESPONSE: The Council agrees with the commenter and will amend the rule in the near future to include extensions of expiring controls as a mechanism.

COMMENT: COAH should consider accessory apartments with 30-year controls as a means to address 50 percent of the town's rental obligation with family rental units and should be added to this listing of other eligible family rental options.

RESPONSE: It has been the Council's experience that accessory apartment programs with 30-year controls have not been successful. If, however, a municipality is successfully in producing accessory apartments with 30-year controls, the Council will consider allowing such units to be used to address the fifty percent family rental obligation.

N.J.A.C. 5:97-3.7

COMMENT: There is a need to define income limits based on regional median for very low rentals. Moderate is 60

percent, low is 44 percent of median and there is no definition for very low income.

RESPONSE: The Council does define "very low income" as 30 percent or less of the median gross household income under N.J.A.C. 5:97-1.4. The Regional Income Limits published annually by the Council include a very low income classification.

COMMENT: If housing is to be built for people who fall below COAH's minimum income level, specifically for those in the very-low income category, municipalities need the State to become a financial partner. The State should provide a 1:1 match for all housing built for those who earn less than 35 percent of area median income.

RESPONSE: The Council now provides a very low income bonus to municipalities that address their growth share obligation with very low income housing. This incentive may encourage municipalities to use funds from their Affordable Housing Trust Fund to provide subsidies for such housing. In addition, municipalities and affordable housing developers are encouraged to take advantage of existing State and Federal funding sources such as the Balanced Housing Program, Low Income Housing Tax Credits, HOME, UHORP and MONI programs.

COMMENT: Providing bonuses only for units that exceed the required number is a good change, but it still provides a likely windfall to developers because the required number of very low-income units can be exceeded without a cost to a developer, particularly in for-sale developments where the affordability average of 55 percent can still be maintained with 15 percent or more very-low-income units, yet no very-low-income units are required by UHAC. There is also no reason to provide bonuses for very low income units when density or public subsidies, including municipal development fees that are required to be used for affordability assistance, could provide necessary support for the creation of more very low income units. COAH should not provide bonuses for very low income units. Alternatively, COAH should only provide such a bonus when it is not financially feasible due to the economics of a project to provide very low income units and when it is demonstrated that public subsidies are unavailable.

RESPONSE: The Council has observed that the production of affordable housing for very low income households has not kept pace with the growing demand, despite the subsidies and other supportive conditions noted by the commenter. Consequently, the Council believes that additional incentives such as the very low income bonus are necessary.

COMMENT: The rules propose one bonus amount for very low income family units, but no bonus for other very low income units.

RESPONSE: In keeping with the spirit of the Mount Laurel doctrine, the Council believes that an incentive is needed for the creation of very low family rental units. The commenter should note that very low family units are also available to the age-restricted population.

N.J.A.C. 5:97-3.7(a)

COMMENT: COAH should eliminate the proposed requirement that some minimum number of very low income affordable units are to be provided before a very low income bonus will be allowed. As the municipal subsidy may be great to create each very low income unit, then a municipality should be entitled to a bonus for each very low income unit.

RESPONSE: The proposed rules do not establish a general minimum requirement for very low income housing; however, affordable rental developments are subject to N.J.A.C. 5:80-26.3(d), which requires that 10 percent of all affordable rental units be priced available to households earning not more than 35 percent of median. A future rule amendment will clarify that a very low income bonus is available to for-sale units that are affordable to very low households earning 30 percent of median or below and to affordable rental units in excess of 10 percent of the total number of affordable rental units. The Council will also consider future rule amendments with regard to the range of affordability.

COMMENT: COAH defines "very low income" to mean 30 percent or less of the median gross household income for households of the same size within the housing region, whereas UHAC sets a different standard at 35 percent of median income. Which standard will COAH recognize when deciding if rental bonus credits are in order?

RESPONSE: Rental bonus credits are provided based on N.J.A.C. 5:97-3.7 and are based on the COAH definition for very low, which sets a standard of 30 percent. The standard set forth in UHAC is outside the scope of the current rule proposal, but the commenter should note that her concerns may be addressed in a future rule proposal.

COMMENT: Please clarify the circumstances under which a "very low income" rental unit would be eligible for a rental bonus credit. Subsection (a) states that two units of credit can be claimed for such units, subject to certain conditions including that ". . .the unit exceeds the number of units required by UHAC." According to UHAC [N.J.A.C. 5:80-26.3(d)] ". . .at least 10 percent of all low-and moderate-income units shall be affordable to households earning no more than 35 percent of median income." Must the number of very low income units exceed this 10 percent threshold to be eligible for rental bonus credit? A code reference to the UHAC requirement should be provided. On a related point, COAH defines "very low income" to mean 30 percent or less of the median gross household income for households of the same size within the housing region, whereas UHAC, as cited above, sets a different standard at 35 percent of median income. Which standard will COAH recognize when deciding if rental bonus credits are in order?

RESPONSE: The proposed rules do not establish a general minimum requirement for very low income housing; however, affordable rental developments are subject to N.J.A.C. 5:80-26.3(d), which requires that 10 percent of all affordable rental units be priced available to households earning not more than 35 percent of median. A future rule amendment will clarify that a very low income bonus is available to for-sale units that are affordable to very low households earning 30 percent of median or below and to affordable rental units in excess of 10 percent of the total number of affordable rental units. The Council will also consider future rule amendments with regard to the range of affordability.

COMMENT: A rule should be added to limit the number of affordable units that can be required of a town, based on the current size of that town. The commenter suggests that 15 percent of the total existing market-rate housing units be the cap for the obligation for new affordable units. As an alternate, the cap can be 20 percent of all existing housing units and provide credit for affordable units completed for Rounds One and Two. To request more than these suggested caps would require a historic small town such as Cranbury to grow at a rate that could not be supported using any good planning principles. It would not allow affordable housing to be part of the community.

RESPONSE: The rule will be amended in the near future to include a 1,000-unit cap of the growth share projection obligation consistent with the Fair Housing Act, N.J.S.A. 52:27D-301. The Council also provides a 20 percent cap adjustment of the municipality's housing stock, pursuant to N.J.A.C. 5:97-5.5.

N.J.A.C. 5:97-3.8

COMMENT: COAH should lower the age-restricted cap to 10 percent because there is no basis for it being at 25 percent. The Appellate Division did not uphold the 25 percent age-restricted cap. COAH states in the introduction to its January 22, 2008 rule proposal that "[t]he Court invalidated the 50 percent cap on age-restricted housing, but upheld the 25 percent cap established in the second round rules." This is incorrect. The Appellate Division stated that "COAH would not violate the Mount Laurel doctrine if it continued to allow municipalities to age-restrict twenty-five percent of new development," but it further said that "the prior age-restricted cap of twenty-five percent should remain in place pending further agency action." *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.*, 80 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007). Thus, the issue of whether the age-restricted cap should be reduced going forward should have been considered by COAH on remand. This is especially important in light of the issues recognized by the Appellate Division regarding the discriminatory impact of age-restricting too many units. *Id.* at 79-80. COAH has not provided a justification for the 25 percent age-restricted cap. The commenter contends, as discussed in the attached report of the Housing and Community Development Network of New Jersey, that

the maximum permitted amount of the age-restricted cap should be less than 25 percent.

RESPONSE: The Appellate Division decision reversed the third round rule that permitted a municipality to limit up to 50 percent of its affordable housing obligation as age-restricted housing but found the prior age-restricted cap of 25 percent to be reasonable. COAH's consultants found that, according to the PUMS file, elderly households represent 33.7 percent of all low- and moderate-income households in New Jersey. But they also represent 70.5 percent of those who have "paid down" their mortgages (that is, they have no mortgages and now spend less than 38 percent of their income on housing costs). In all, elderly households account for 26.1 percent of low- and moderate-income households who have not paid down their mortgage. The Council believes that the 25 percent cap is reasonable and necessary for New Jersey's senior population and will ensure a balance of housing opportunities for families, seniors and people with disabilities. Further, affordable family units are available to the age-restricted population.

COMMENT: By decreasing the allowable percentage of age-restricted housing as an alternative for municipalities spending developer's fees, COAH has further limited the ability to use these collected funds within municipal borders for the benefit of our residents. By maintaining the 50 percent allowable allocation for age-restricted housing, the municipality will be better equipped to plan for housing alternatives for an aging residential base. This alternative provides the flexibility for long time residents to remain in the communities where they have established deep social and civic roots.

RESPONSE: The Appellate Division decision reversed the third round rule that permitted a municipality to limit up to 50 percent of its affordable housing obligation as age-restricted housing but found the prior age-restricted cap of 25 percent to be reasonable.

N.J.A.C. 5:97-3.9

COMMENT: The commenter supports the reduction from 50 to 25 percent for age-restricted units. New Jersey certainly needs more family housing. However, the requirement that 50 percent of the growth share units provided in communities be family units should be increased to 75 percent to reflect the fact that family housing is the kind that's most difficult to build and to reflect the greater need for/difficulty producing family units, due to "not in my back yard" and related factors. This proposed change is directly in line with the court-mandated reduction in senior housing.

RESPONSE: The Council recognizes the need for affordable family housing and for that reason has introduced the minimum family requirement in these rules. However, a minimum requirement of 75 percent as suggested by the commenter would impact a municipality's ability to use other legitimate affordable housing options, such as age-restricted housing and supportive and special needs housing, as a means of addressing its fair share. The Council wishes to provide a balance of housing opportunities to all segments of the population.

COMMENT: The required minimum of 50 percent family affordable housing is a long overdue positive addition to COAH rules.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The addition of a family housing requirement is a step forward and will help provide better opportunities for families and children across New Jersey.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-3.10(a)

COMMENT: The rental housing component of the growth share requirement should be increased from 25 percent to at least 50 percent. As DCA's own statistics show (see Consolidated Plan FY 2007 Action Plan (Housing Needs Data table)), there are more than 1.1 million low- and moderate-income households in New Jersey. Approximately 735,000

of these households have housing problems. Of the latter, 394,000 - 54 percent - are tenants. Nearly 80 percent of tenants with housing problems are low-income. Without question, decent, safe and affordable rental housing is by far the greatest housing need of low- and moderate-income people, and meeting this need should be COAH's first priority.

RESPONSE: The 25 percent rental housing minimum remains unchanged from the Council's second round rules. The Council believes that the production of rental housing is essential to any program designed for low and moderate income households and that a balance between rental housing and homeownership opportunities is needed.

N.J.A.C. 5:97-3.10(b)

COMMENT: The commenter supports the reduction from 50 percent to 25 percent for age-restricted housing, as mandated by the Court.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-3.10(b)2

COMMENT: COAH should amend its regulations to increase the proposed 25 percent senior affordable housing cap to 33 percent as reflected by COAH's data. Although the Appellate Court invalidated COAH's initial third round senior affordable housing cap of 50 percent, the Court's decision also acknowledged that COAH's own data showed a need for senior affordable housing at a 33 percent Statewide level. With many municipalities experiencing a significant residential development push to accommodate senior residential communities, COAH should amend its regulations to increase the 25 percent senior affordable housing cap to 33 percent, well within the Court's accepted analysis. An increase to 33 percent will allow towns to require these new senior communities to build on-site senior affordable units.

RESPONSE: The Appellate Division decision reversed the third round rule that permitted a municipality to limit up to 50 percent of its affordable housing obligation as age-restricted housing but found the prior age-restricted cap of 25 percent to be reasonable. The Council believes that the 25 percent cap will ensure a balance of housing opportunities for families, seniors and people with disabilities. Further, affordable family units are available to the age-restricted population.

N.J.A.C. 5:97-3.10(c)

COMMENT: COAH should permit up to 25 percent of an RCA transfer to a receiving town to be addressed by senior affordable units in the receiving town. Specifically, for both the prior round and third round, COAH will limit the number of senior units produced by a receiving municipality to be limited to any leftover of the senior cap of the sending municipality. This makes no sense and just unfairly limits the number of much needed senior affordable housing in the receiving municipality.

RESPONSE: The age-restricted cap applies to the total affordable housing obligation addressed by a municipality; therefore, under N.J.A.C. 5:97-3.10(e), age-restricted units that are transferred to another municipality through an RCA are subtracted out in the formulas. The Council believes that this provision ensures that the total number of age-restricted units provided by sending and receiving municipalities will not exceed the 25 percent cap endorsed by the Court. If necessary, a receiving municipality may seek a waiver to exceed the age-restricted cap in accordance with N.J.A.C. 5:96-15.

N.J.A.C. 5:97-3.10(d)2

COMMENT: RCA maximum, age-restricted maximum and rental requirement maximum of 50, 25, and 25 percent respectively, must not be set in stone. These numbers reflect a reasonable distribution of affordable units to meet demand in an ideal case, but in no way reflect the reality of current housing conditions throughout the State. Individual

municipalities will have different housing needs to be met and these rules must offer flexibility to meet these local demands.

RESPONSE: The commenter should note that the rental requirement of 25 percent is a minimum, not a maximum. The Council wishes to provide a balance of housing opportunities to all segments of the population and believes that this balance is more likely to be achieved if clear minimums and maximums are established for all municipalities.

N.J.A.C. 5:97-3.11(a)

COMMENT: A formula should be added for calculating the rental obligation based on the Prior Round unmet need, that is, 25 percent of the unmet need.

RESPONSE: The Council considered the commenter's proposal but concluded that the nature of unmet need is such that it would be difficult to determine municipal compliance. The Council has never required a minimum rental obligation as part of a municipality's unmet need and has chosen to adhere to this policy.

N.J.A.C. 5:97-3.11(d)1ii

COMMENT: The regulations include this formula for the maximum amount of the prior round obligation that may be transferred through RCAs: "RCA Maximum = 50 percent (Unmet Need)." Please explain when the Unmet Need would be transferred through an RCA. Does this reflect a change in approach by COAH?

RESPONSE: The commenter refers to a provision that applies only to municipalities that had been granted a vacant land adjustment as part of a second round substantive certification or judgment of compliance. In the past, although the Council's rules did not explicitly establish an RCA maximum for the unmet need, the Council did permit municipalities to address a portion of their unmet need through the use of RCAs. In keeping with the 50 percent maximum RCA requirement, the permitted number of RCA units addressing the unmet need should increase in proportion to the growth that may occur, up to a maximum 50 percent.

N.J.A.C. 5:97-3.12

COMMENT: It seems unfair to place restrictions on a municipality for just applying for a vacant land adjustment. This section of the rules seems to have been written to penalize our municipality for making an application during the second round rules. N.J.A.C. 5:97-3.12 should be eliminated from the final rules as being unnecessary and punitive to the Town of Secaucus by restricting our discretion in implementing the rules. Secaucus should not be placed into the same category as those municipalities that are under a judgment of compliance. It should also be noted that the request for a vacant land adjustment was largely due to the New Jersey Meadowlands Commission actions in purchasing a large tract of land that they are utilizing for wetlands mitigation. This area was originally zoned for a large residential development. Secaucus attempted to deal with the State agency's (NJMC's) acquisition by eliminating it from the bank of developable land.

RESPONSE: Municipalities that are seeking a vacant land adjustment for the first time or whose vacant land adjustment was not granted as part of a second round substantive certification or judgment of compliance may still apply credits for built units toward its affordable housing obligation. The only difference for this category of municipalities is that these units would be applied toward the total prior round obligation before the RDP is established. The rule will be amended in the near future to say that if the credited unit was constructed after June 6, 1999, the municipality may apply the credit to the RDP or unmet need, at the municipality's discretion, provided the credited unit was not a mechanism previously included in the plan to address unmet need. Municipalities may apply credits for units constructed after June 6, 1999, to the growth share obligation provided credits have first been applied to the RDP. In addition, a judgment of compliance from the Courts is the equivalent to substantive certification from the Council.

N.J.A.C. 5:97-3.13

COMMENT: With regard to site suitability criteria for affordable housing, there is the presumption, as stated in paragraph (a)3, that such sites will have access to ". . .water and sewer infrastructure with sufficient capacity, and is consistent with the applicable area wide water quality management plan (including the wastewater management plan) or is included in an amendment to the area wide water quality management plan submitted to and under review by DEP. . ." This point illustrates the conflict between COAH's rules and the Highlands RMP and underscores the need to have a more comprehensive, cooperative and regional approach to providing affordable housing in accordance with the policies of the RMP. With over 114 of the 183 HUC-14 sub-watersheds in the Highlands already lacking capacity for any additional growth, this rule will directly contradict the firm limits set forth in N.J.A.C. 5:97-3.10 which allow a municipality to limit its RCAs to 50 percent of its obligation. There is no reasonable solution to this contradiction presented in these proposed regulations.

RESPONSE: To clarify the intent of N.J.A.C. 5:97-3.13(a)3, a future rule amendment will add definitions of "sewer capacity" and "water capacity," and the provision will be revised to reference them. The definitions recognize on-site facilities, thereby addressing situations in which municipalities must rely on development on septic systems. In a future amendment, the Council will strengthen its rules to require that clustering, lot size averaging and/or attached housing be permitted in inclusionary zones. The Council will also amend the rules to provide for a durational adjustment for the third round. There are several affordable housing mechanisms available to all municipalities that do not involve inclusionary zoning or necessitate the development of vacant land. These include an accessory apartment program, a market to affordable program, supportive and special needs housing, regional contribution agreements, an affordable housing partnership program, and extension of expiring controls. In addition, two-for-one bonuses for rental units and very low-income housing are also available. Other innovative approaches meeting the Council's basic requirements for the provision of affordable housing will also be considered by the Council. COAH's consultants have been working with NJDEP to incorporate additional information with regard to increasing the size of certain stream buffers and refining where development may be permitted within floodplain areas, both of which are regulated by the recently adopted Flood Hazard Control Act. In addition, they are updating the vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rule changes. DEP has granted more than 100 permits for small and innovative technology wastewater treatment plants and is actively working with the Pinelands Commission to test the use of individual innovative septic treatment units on one-acre residential parcels. COAH believes that such technology can be safely applied to provide affordable housing in other parts of the State. The pending WQMP Rules will require that each of the 21 counties in the state develop a comprehensive long-term wastewater and water management plan to replace the 190 plans now in use, the overwhelming majority of which are out of date. These plans will be required to address any inconsistencies between build-out demand versus treatment capacity and water availability. Ultimately, these plans will inform the vacant land and development capacity analysis prepared by COAH. Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, COAH's consultants are revising their vacant land development capacity.

COMMENT: An inconsistency between COAH's proposed rules and NJDEP regulations arises with the upcoming adoption (May 2008) of the Water Management Planning (WQMP) rules that will expand regulations to protect water quality and provide for more realistic projections of wastewater and water supply needs. The disconnect between COAH's proposed rules, on the one hand, and water supply, wastewater treatment policy, capacity and service areas on the other, must be resolved in a manner that protects water supply and water quality, and takes advantage of existing sewage treatment infrastructure in Planning Areas 1 and 2.

RESPONSE: The Council's consultants have been working with NJDEP to incorporate additional information with regard to increasing the size of certain stream buffers and refining where development may be permitted within floodplain areas, both of which are regulated by the recently adopted Flood Hazard Control Act. In addition, they are updating the vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rule changes. DEP is currently reviewing its proposed changes to C-1 stream classifications, and could not make any updated spatial data available with regard to potential impacts.

COMMENT: COAH should amend its rules to say that any site with access to public water and sewer is a preferred location for affordable housing.

RESPONSE: The Council does not believe that the suggested rule revision is necessary. Sites within Planning Areas 1 or 2 or located within a designated center or located in an existing sewer service area are the preferred location for municipalities to address their fair share obligation. However, this preference does not preclude the possibility that other sites may be considered suitable by the Council. A future amendment will add definitions of "sewer capacity" and "water capacity" that recognize on-site facilities, thereby addressing situations in which municipalities must rely on development on septic systems.

COMMENT: On the presumption of validity for affordable housing sites, areas that are Planning Area 1, 2, centers or sewer service areas can get a presumption of validity. There has to be a site-by-site verification because there's a circular logic that was included in the old state plan and even sewer service areas. Many of them go back to the 1960s to the concept of regional sewage authority that were never created in a lot of places. In some areas, they're still in sewer service areas even though the plans were never built, the environmental analysis were never done, whether there's enough potable water or whether the streams can handle those discharges. So you really need to make sure that the sites that are picked have adequate sewer, adequate water, are not going to be impacting the environment, but they can get built so that people can actually get their affordable housing.

RESPONSE: Under the Council's proposed rules at N.J.A.C. 5:97-3.13(a), one of the criteria for evaluating site suitability is evidence that the site has access to water and sewer infrastructure with sufficient capacity and is consistent with the applicable area wide water quality management plan submitted to or under review by DEP. Sites within Planning Areas 1 or 2 or located within a designated center or located in an existing sewer service area are the preferred location for municipalities to address their fair share obligation. To clarify the intent of N.J.A.C. 5:97-3.13(a)3, a future rule amendment will add definitions of "sewer capacity" and "water capacity," and the provision will be revised to reference them. The definitions recognize on-site facilities, thereby addressing situations in which municipalities must rely on development on septic systems.

COMMENT: The proposed rule needs to clarify that a site shall be deemed "suitable" only if the intended use of that site is consistent with state and/or federal rules and regulations governing land use in New Jersey. The title of this section should be amended to read "Site Suitability Criteria and Conformance with the State Development and Redevelopment Plan and Other Applicable Statutes." The proposed rules should be amended to include a clarifying statement at N.J.A.C. 5:97-3.13(a)5 such as "The site can be developed consistent with other applicable state and federal rules, regulations and standards."

RESPONSE: The Council believes that the requirement under N.J.A.C. 5:97-3.13(b), which states that that affordable housing sites "shall be in compliance with the rules and regulations of all agencies with jurisdiction over the site," addresses the commenter's concern.

COMMENT: The rule should be amended as it contains a presumption that affordable housing sites will have access to "water and sewer infrastructure with sufficient capacity, and is consistent with the applicable area wide water quality management plan (including the wastewater management plan) or is included in an amendment to the area wide water quality management plan submitted to and under review by DEP. . ." This section ignores the reality that many municipalities will have inclusionary strategies that involve development as to on-site septic systems. Further, although our municipality is in a major watershed that supplies drinking water to hundreds of thousands of residents in the State of New Jersey, the Township itself has performed studies which indicate that there is a water deficit as to the residents that are served within the Township. Therefore, these rules should be amended to take into consideration the devastating demands on infrastructure that affordable housing will create on the municipality. Finally, for municipalities in the Highlands Preservation Area, this section contradicts the Highlands Regional Master Plan which specifically prevents the construction of new wastewater facilities.

RESPONSE: To clarify the intent of N.J.A.C. 5:97-3.13(a)3, a future rule amendment will add definitions of "sewer capacity" and "water capacity," and the provision will be revised to reference them. The definitions recognize on-site facilities, thereby addressing situations in which municipalities must rely on development on septic systems. Although water capacity constraints may limit future development in some watershed areas, COAH believes that beneficial water reuse, water saving devices and priority treatment to affordable housing units must be given full consideration where capacities are limited. The 88 towns located within the Highlands region continue to have a constitutional obligation to provide for affordable housing, within constraints imposed by the Highlands Act. The Council has updated its methodology to include data provided by the Highlands Council, thereby making the projections for the Highlands municipalities more realistic and attainable.

COMMENT: The rule also requires that there be infrastructure with sufficient capacity consistent with the area wide water quality management plan, or amendment to it. This involves a process dependent on engineering services and seems more appropriately part of the development review process for a site plan, rather than a municipal fair share plan.

RESPONSE: In reviewing a municipality's Housing Element and Fair Share Plan, the Council's objective is to evaluate whether or not a potential site presents a realistic opportunity for the production of affordable housing. To that end, as part of its petition for substantive certification, a municipality must demonstrate that sites designated to produce affordable housing are "developable" in that they have access to water and sewer infrastructure with sufficient capacity and are consistent with the applicable area wide water quality management plan or amendment thereto. The Council recognizes that in some cases a municipality may not be able to demonstrate sewer and water availability at the time of petition, in which case the municipality must indicate what steps will be taken to obtain sewer and water service necessary to accommodate proposed affordable housing mechanisms within the period of certification. The commenter should note that in the case of some affordable housing mechanisms, including proposed municipally sponsored and 100 percent affordable developments, supportive and special needs housing, assisted living residences, and redevelopment proposals, the documentation may be submitted in accordance with an approved implementation plan pursuant to N.J.A.C. 5:97-3.2(a)4. The Council will also amend the rules to provide for durational adjustments in the third round.

COMMENT: The site suitability criteria are fairly broad, including requirements for infrastructure to support development, but when it comes to assigning projected growth to municipalities, the same criteria are not employed. The analysis should be the same for both.

RESPONSE: While the vacant land analysis did not consider infrastructure constraints, the rule will be amended in the near future to provide for durational adjustments toward the growth share obligation, thus addressing the commenter's concern.

COMMENT: The rules are very clear that the location of affordable housing should be consistent with the site suitability criteria contained in the SDRP. On that basis, COAH's rules should be designed to respect the other comprehensive planning criteria in the SDRP by allowing for the exclusion of all lands that are preserved and should be preserved as open space. To the extent this would require a modification of the Fair Housing Act, COAH and the Commissioner of DCA should work with New Jersey's Legislature to bring such changes about.

RESPONSE: Under the site suitability requirements of N.J.A.C. 5:97-3.13(b), sites designated to produce affordable housing must be consistent with the SDRP. Sites within Planning Areas 1 or 2 or located within a designated center or located in an existing sewer service area are the preferred location for municipalities to address their fair share obligation. The Council does not require lands that are preserved for open space to be used for affordable housing. Modifications to the Fair Housing Act are outside the scope of the rule proposal.

COMMENT: The commenter urges COAH and the Highlands Council to expeditiously execute a Memorandum of Understanding between both agencies which clearly determines the growth share obligation of Highlands

municipalities. Execution of this MOU is imperative for Highlands municipalities to accurately determine, plan and implement their Third Round obligations.

RESPONSE: The Council notes that, as of the date of this rule adoption, the Highlands RMP is in draft form and has not been adopted. Upon adoption of the Highlands RMP, the Council will consider its impacts. COAH intends to work cooperatively with the Highlands Council to enter into a Memorandum of Understanding in the near future. However, the commenter should note that the growth share obligations of Highlands municipalities are clearly set forth in the rules and appendices. Further, the 88 towns located within the Highlands region continue to have a constitutional obligation to provide for affordable housing, within constraints imposed by the Highlands Act. The Council has updated its methodology to include data provided by the Highlands Council, thereby making the projections for the Highlands municipalities more realistic and attainable.

COMMENT: COAH now proposes in effect to repeal the Third Round Memorandum of Understanding between COAH and the State Planning Commission, adopted July 13, 2004, N.J.A.C. 5:94 Appendix D. Why? New Jersey needs closer coordination and integration of policies by the two State agencies spawned by *Mount Laurel II*, not less.

RESPONSE: COAH intends to work cooperatively with the State Planning Commission and to update the Memorandum of Understanding in the near future.

COMMENT: The Third Round Memorandum of Understanding between COAH and the State Planning Commission, adopted July 13, 2004, N.J.A.C. 5:94 Appendix D, contains the important interagency agreement that: "All planning areas can accommodate growth and therefore can accommodate a commensurate affordable housing obligation in a manner consistent with the goals, objectives, and policies of the State Plan." This is a realistic recognition that growth occurs throughout New Jersey, in all planning areas. COAH should renegotiate a Memorandum of Understanding with the State Planning Commission and should propose a State Plan conformance rule that recognizes the reality that growth does and should take place, albeit in different forms, patterns, and densities, nearly everywhere in New Jersey.

RESPONSE: The Council agrees with the commenter. COAH intends to work cooperatively with the State Planning Commission and to update the Memorandum of Understanding in the near future.

COMMENT: The identification of sites for affordable housing within "an existing service area" as a required preferred location in proposed N.J.A.C. 5:97-3.13(b) appears inconsistent with the lesser standard in proposed N.J.A.C. 5:97-3.13(a) that the site suitability criterion on access to sewer infrastructure may be met by having the site merely "included in an amendment to the area wide water quality management plan submitted to and under review by DEP" but not yet decided upon by DEP and therefore not yet in a sewer service area, as required by proposed N.J.A.C. 5:97-3.13(b). Please clarify and resolve this inconsistency.

RESPONSE: The commenter has misinterpreted the provision. Under N.J.A.C. 5:97-3.13(b)1, a site located in an existing sewer service area is one of several "preferred" locations for addressing a fair share obligation, consistent with policies in the State Development and Redevelopment Plan (SDRP). For example, a site that is not in Planning Area 1 or 2 or within a designated center may still be consistent with the SDRP if it is within a sewer service area. It is not a required location. However, all sites must demonstrate site suitability in accordance with N.J.A.C. 5:97-3.13(a)3. To clarify the intent of N.J.A.C. 5:97-3.13(a)3, a future rule amendment will add definitions of "sewer capacity" and "water capacity," and the provision will be revised to reference them. The definitions recognize on-site facilities, thereby addressing situations in which municipalities must rely on development on septic systems. In addition, the Council will amend the rule to provide for a durational adjustment for the third round. However, the commenter should note that durational adjustments are granted on a site specific basis and only in cases where water and sewer capacity is expected to be made available in the near future.

COMMENT: Construction of inclusionary affordable housing developments should be exempt from the provisions

of the Highlands Water Protection Act. For example, lands that have been zoned for affordable housing prior to the effective date of the Highlands Act and that were included in a municipality's substantively certified housing plan must be permitted to be developed. The Highlands Act rules must be relaxed for inclusionary affordable housing developments or no affordable housing will be built in the Highlands region.

RESPONSE: The commenter's recommendation, which pertains to the Highlands Act, should be directed at the Highlands Council or to the Legislature.

COMMENT: Under N.J.A.C. 5:97-3.13(a)3, site suitability requires a demonstration that a site has access to water and sewer infrastructure with sufficient capacity, and consistency with the applicable area wide water quality management plan. N.J.A.C. 5:97-5.3, Unmet need, subsection (e) also allows a municipality to demonstrate that it cannot meet its housing obligation due to a lack of water and/or sewer capacity. A unified methodology for determining these capacities should be developed in conjunction with the NJDEP and the Highlands Council. One "harmonized" "land capacity/build-out model" is needed as a foundation for any such analysis.

RESPONSE: The Council determines municipal compliance with its fair share obligation based upon whether the plan, and specific sites within the plan, provide a realistic opportunity as defined at N.J.A.C. 5:97-1.4. Realistic opportunity is determined through a site suitability analysis, which includes an evaluation of the availability of water and sewer capacity and is undertaken to determine whether or not a municipality's fairs share plan adequately addresses its affordable housing obligation. A durational adjustment, on the other hand, is defined as "a deferral of the affordable housing obligation based on lack of infrastructure" A site suitability analysis and a durational adjustment have different purposes and therefore cannot be combined into one unified methodology. The Council will amend the rule in the near future to provide for a durational adjustment for the third round.

COMMENT: Commenter asserts the prior comments under N.J.A.C. 5:97-1.1 regarding the problematic nature of the proposed cross acceptance recommendations to the State Plan. In particular, all Planning Area 2 is being removed from Hunterdon County with no planning basis other than to eliminate affordable housing opportunities within the County. Sites that have available water and sewer capacity are being removed from Planning Area 2 and arbitrarily designated as Planning Area 5. Therefore, the commenter recommends that the Council be more aggressive with the State Planning Commission to assure that previously designated planning areas with water and sewer infrastructure be included in both growth areas under the Highlands Act as well as Planning Area 2 under the State Plan. Otherwise, the "growth share" will be so suppressed by NJDEP, Highlands and Coastal Area Facility Review Act (CAFRA) regulations so as to render it impossible to meet the growth share minimum requirements. The commenter believes that the Council should utilize proposed N.J.A.C. 5:97-3.13(b)2 and 3 to assure that sites that have adequate sewer and water, but are either designated in "conservation areas" under the Highlands Act and/or outside of centers under CAFRA designation, or in Planning Areas 3, 4b, 4, 5 and 5b, be recognized as suitable sites for the development of affordable housing so as to assure that the growth share allocation is met.

RESPONSE: COAH intends to work cooperatively with other State agencies. The Council currently has memoranda of understanding with the State Planning Commission, the Pinelands, the Meadowlands, and the N.J. Department of Environmental Protection, all of which the Council intends to update and expand. In addition, the Council intends to enter into an MOU with the Highlands Council in the near future. The Highlands Regional Master Plan and the State Development and Redevelopment Plan are in draft form and have not been adopted. The State Planning Commission is expected to adopt an updated Plan by the end of 2008. The Council will follow DEP regulations that restrict development, but the rule will be amended to include presumptive densities in areas that can accommodate growth, including sewer service areas in PA 3, 4, and 5. The recognition that growth occurs throughout New Jersey, in all planning areas, is acknowledged in the Third Round Memorandum of Understanding between COAH and the State Planning Commission that was adopted on July 13, 2004, which contains the important interagency agreement that: "All planning areas can accommodate growth and therefore can accommodate a commensurate affordable housing obligation in a manner consistent with the goals, objectives, and policies of the State Plan." This is a realistic recognition that growth occurs throughout New Jersey, in all planning areas.

COMMENT: The proposed rule states only that conformance with the State Plan planning areas is "preferred," not required. It is the policy of the State Plan to have new development take place in PAs 1 and 2, so it is difficult to see how the Council will use the State Plan to conclude that inclusionary developments in PAs 3, 4 and 5 are consistent with the State Plan's policies. In sum, this provision leaves too much to chance and judgment by the Council, an agency that is not charged with implementation or interpretation of the State Plan. The rule should be changed to provide that inclusionary zoning must be located in PAs 1 or 2 or a center unless the State Plan Commission authorizes a waiver based on express criteria written to ensure consistency with the purposes of the State Plan.

RESPONSE: The commenter should note that the Third Round Memorandum of Understanding between COAH and the State Planning Commission which was adopted July 13, 2004, contains the interagency agreement that: "All planning areas can accommodate growth and therefore can accommodate a commensurate affordable housing obligation in a manner consistent with the goals, objectives, and policies of the State Plan." This is a realistic recognition that growth occurs throughout New Jersey, in all planning areas. The *Mount Laurel* decisions and the FHA make clear that every municipality has a constitutional obligation to provide for its fair share of the regional need for affordable housing. While COAH prefers affordable housing developments to be located in PA 1, 2 or centers, COAH does not believe it would be appropriate to eliminate all lands outside of these areas from an analysis of vacant, developable land or and affordable housing obligation, particularly as the State agencies, such as DEP, that regulate use of the land would permit development on these lands. Further, the commenter should note that the MOU between the SPC and COAH, dated July 13, 2004, states, "All planning areas can accommodate growth and therefore can accommodate a commensurate affordable housing obligation in a manner consistent with the goals, objectives, and policies of the State Plan."

COMMENT: COAH's site suitability rules have effectively mandated that rural municipalities in Planning Areas 4, 4B, 5 and 5B must seek plan endorsement from the State Planning Commission (SPC) even though COAH has revised the previous requirement for plan endorsement to simply an encouragement. COAH's rules require these sites to have public water and sewer which would only be approved by DEP in a designated town center which requires plan endorsement. COAH should eliminate this end-around for requiring plan endorsement from the SPC. This becomes yet another unfunded mandate for our community which will strain an already fragile municipal budget.

RESPONSE: To clarify the intent of N.J.A.C. 5:97-3.13(a)3, a future rule amendment will add definitions of "sewer capacity" and "water capacity," and the provision will be revised to reference them. The definitions recognize on-site facilities, thereby addressing situations in which municipalities must rely on development on septic systems and eliminating the need to seek plan endorsement. NJDEP has granted more than 100 permits for small and innovative technology wastewater treatment plants and is actively working with the Pinelands Commission to test the use of individual innovative septic treatment units on one-acre residential parcels. COAH believes that such technology can be safely applied to provide affordable housing in other parts of the State.

COMMENT: The rules should guide housing to more appropriate locations and give incentives for communities to protect the environment. For example, the current rules say that if you protect steep slopes in your community, they would not be locations for inclusionary zoning. The proposed rules do not provide communities who protect their environmentally sensitive features such as C1 streams, steep slopes and endangered species, with the language to eliminate those sites as inclusionary zoning areas. Inclusionary zoning should be guided to smart growth areas and incentives should be given to rural communities that create mixed-use, transit friendly development on non-environmentally sensitive lands. Towns need to have more flexibility in relocating existing undeveloped affordable housing sites from environmentally sensitive areas to alternative, appropriate sites.

RESPONSE: The Council provides criteria for site suitability but does not dictate the location of affordable housing sites. Affordable housing sites should be subject to the same local restrictions as market-rate housing. If, for example, a municipality restricts development in steep slope areas or other environmentally sensitive areas, then affordable housing should be subject to those same restrictions. The use of inclusionary zoning is a municipal option, and environmentally sensitive lands need not be zoned for inclusionary development. Municipalities have flexibility in

determining where affordable housing should be located. The rules will be amended in the near future to provide bonuses for affordable housing within Transit Oriented Developments in Planning Area 1, Planning Area 2, or a designated Center. The Council also promotes center-based development. The commenter should note that C1 streams have been excluded as part of COAH's vacant land analysis. Further, new DEP rules remove endangered species habitats from sewer service areas if more than 25 acres. Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, COAH's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The consultants are further updating this data to incorporate the estimated impacts of pending DEP Water Quality Management/Wastewater Management Plan Rule changes, using the same methodology as being employed to revise development capacity estimates across the rest of the state. These lower development capacity estimates will be used by COAH's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole.

COMMENT: The site suitability criteria and conformance with the State Development and Redevelopment Plan section provides no requirement or objective mechanism for conformance with the State Plan. The commenter recommends that the rules recognize that the Office of Smart Growth will review and approve all Fair Share Plans for consistency with the development patterns and presumptive densities recommended in the State Plan.

RESPONSE: A municipality that petitions the Council for substantive certification has the responsibility to demonstrate compliance with N.J.A.C. 5:97-3.13(b), which requires that sites designated to produce affordable housing be consistent with the SDRP and with the rules and regulations of all agencies with jurisdiction over the site. The Council believes that in many cases, the documentation submitted will be sufficient to determine compliance. If, for example, a proposed affordable housing site is located within Planning Area 1, consistent with an existing up-to-date wastewater management plan, and is otherwise suitable, the Council does not believe it should be required to seek a recommendation from other regulating agencies. However, if the Council determines that the documentation submitted by the municipality is not sufficient to clearly demonstrate compliance, N.J.A.C. 5:97-3.13(c) gives the Council the discretion to seek guidance from other applicable agencies and to require the submission of all necessary documentation to those agencies to determine compliance. In many instances, this process would most appropriately be coordinated through the Office of Smart Growth. The Council notes that its rules will be amended in the near future to provide presumptive densities by planning area for affordable housing purposes.

COMMENT: The rule states that sites designated by municipalities for meeting their fair share obligation must be consistent with the Pinelands Comprehensive Management Plan (CMP), but, as noted above, it is not at all clear that this will be possible for some municipalities given that their growth share obligation is to be determined independent of Pinelands CMP regulations on land use. The rule needs to be modified to provide that the fair share obligation, not merely the detailed zoning, must be consistent with the growth potential provided by the CMP. The same point applies for the Highlands Regional Management Plan, the Meadowlands plan and zoning regulations, and the CAFRA rules.

RESPONSE: COAH's consultants utilized Meadowlands, Pinelands and Highlands zoning and environmental constraint data whenever possible and appropriate to determine vacant land and to estimate the development capacity of that land. The rules include a provision that allows a municipality to seek an adjustment to the household and employment projections provided in Appendix F, based on an analysis of existing land capacity.

N.J.A.C. 5:97-3.13(a)

COMMENT: As COAH expands site suitability criteria to include available, approvable, developable, and suitable as in the second round, the definitions of each should be put back in the proposed regulations. Only "suitable" is now defined.

RESPONSE: The Council believes that the definition for "suitable site" and the criteria set forth at N.J.A.C. 5:97-3.13 sufficiently address the commenter's concerns.

COMMENT: The commenter requests a clearer definition of the phrase "adjacent to compatible land uses and has access to appropriate streets" at N.J.A.C. 5:97-3.13(a). Would locating an affordable housing project in an area of non-residential uses be considered to be a site with compatible land uses? Would locating an affordable housing project at a site that would require changing the hierarchical classification of a street be considered acceptable? The standard "adjacent to compatible land uses" may be utilized as a reason for adjacent market-rate residential property owners to object to affordable housing next to their sites, based on differing densities, layout, etc. The commenter recommends that this standard be clarified by putting it into the context that affordable housing should not be located in areas where environmental justice is an issue, such as next to landfills, in heavy industrial areas, or in areas where there is poor access to roadway systems, etc.

RESPONSE: The Council notes that there is no precise definition as to what are compatible land uses, as circumstances vary greatly. In the example given by the commenter, for instance, an affordable housing project in an area of non-residential uses may not be compatible if the non-residential use has deleterious offsite impacts, but may be in other cases where the use is innocuous and if proper setbacks and screening are in place. The Council relies on professional planners on staff to make such determinations.

COMMENT: The phrase "as evidenced by" in the proposal is awkward and unclear. It should be replaced by "according to." In this manner, municipalities will demonstrate compliance with criteria.

RESPONSE: The Council has revised the rule in accordance with the commenter's suggestion.

COMMENT: The requirement to demonstrate compliance with the Residential Site Improvement Standards ("RSIS"; N.J.A.C. 5:21) is premature, redundant, and cost-generating without benefiting the general welfare. Compliance with RSIS is the law for residential development. Requiring a demonstration of compliance with RSIS at the housing plan stage could force developers and municipalities to prematurely undertake costly subdivision and site plan engineering in order to demonstrate consistency with RSIS.

RESPONSE: The commenter is correct in noting that the Residential Site Improvement Standards are the law for residential development. However, the commenter has misinterpreted the intent of this provision, which states that affordable housing sites shall be "available, approvable, developable and suitable," as evidenced by consistency with the RSIS and other criteria. The Council has historically defined "approvable" to mean a site that may be developed in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site, that is, it is expected to be developed in a manner consistent with the RSIS and other applicable regulations. The rule does not state that the municipality must demonstrate compliance at the time of petition.

N.J.A.C. 5:97-3.13(a)1

COMMENT: The rule requires a demonstration that a suitable site has clear title and is free of encumbrances. This appears to indicate a requirement for a title search and legal due diligence that is unreasonable and imposes additional costs if the site is municipally sponsored. If it is a developer's site, what authority does the municipality have to require this work be produced from the developer?

RESPONSE: In reviewing a municipality's Housing Element and Fair Share Plan, the Council's objective is to evaluate whether or not a potential site presents a realistic opportunity for the production of affordable housing. To that end, a municipality must demonstrate that sites designated to produce affordable housing are "available," as evidenced by clear title. The Council expects that due diligence in this regard would be part of any developer's consideration of property for residential development, be it a municipality, a non-profit developer, or a private developer.

N.J.A.C. 5:97-3.13(a)3

COMMENT: Many municipalities within the Pinelands Area, including some growth areas, are not presently

within sewer service areas and there is no reasonable expectation that any of these communities will be served by sewer within the planning horizon of the new Third Round Rules (2018). Further, in all Pinelands management areas, no residential or non-residential use is permitted on a parcel of less than one acre unless it is served by a centralized waste water plant or community waste water treatment system. Consequently, it is not possible for these municipalities to meet the criteria set forth in N.J.A.C. 5:97-3.13(a)3 with respect to the demonstration of access to water and sewer infrastructure.

RESPONSE: To clarify the intent of N.J.A.C. 5:97-3.13(a)3, a future rule amendment will add definitions of "sewer capacity" and "water capacity," and the provision will be revised to reference them. The definitions recognize on-site facilities, thereby addressing situations in which municipalities must rely on development on septic systems. In a future amendment, the Council will strengthen its rule to require that clustering, lot size averaging and/or attached housing be permitted in inclusionary zones.

COMMENT: Municipalities in Planning Areas 3, 4, 4B, 5 or 5B which either plan for or have affordable housing that is not within a designated center or an existing sewer service area have the burden of demonstrating that the affordable housing is consistent with ". . .sound planning principles and the goals, policies and objectives of the State Development and Redevelopment Plan" (SDRP). The rules no longer rely upon SDRP for growth projections, and consistent with that, the requirements for SDRP Plan Endorsement have been eliminated. This rule should not burden municipalities with the requirement to demonstrate that the site is consistent with sound planning principles.

RESPONSE: The Council does not agree with the commenter. Consistency with sound planning principles is fundamental to any Fair Share Plan as it is included in a municipality's Housing Element, a required component of the Master Plan pursuant to the Municipal Land Use Law, and consistency with the SDRP is a requirement for site suitability under N.J.A.C. 5:97-3.13(b).

COMMENT: Site suitability criteria are burdensome for municipalities that must rely upon individual on site well or septic or both. The site suitability criteria includes a requirement at paragraph (a)3 that "the site has access to water and sewer infrastructure with sufficient capacity, and is consistent with the applicable area wide water quality management plan (including the wastewater management plan) or is included in an amendment to the area wide water quality management plan submitted to and under review by DEP. . ." This requirement does not account for the situation that many municipalities may have to rely upon inclusionary strategies which involve development on septic systems. This reality should be revised where water and sewer infrastructure does not exist, or does not have sufficient capacity to support inclusionary zone densities.

RESPONSE: To clarify the intent of N.J.A.C. 5:97-3.13(a)3, a future rule amendment will add definitions of "sewer capacity" and "water capacity," and the provision will be revised to reference them. The definitions recognize on-site facilities, thereby addressing situations in which municipalities must rely on development on septic systems. In a future amendment, the Council will strengthen its rule to require that clustering, lot size averaging and/or attached housing be permitted in inclusionary zones.

COMMENT: Since a submitted WMP amendment will not necessarily gain NJDEP approval, N.J.A.C. 5:97-3.13(a)3 should be revised to indicate that the amendment must be approved to satisfy the available, approvable, developable and suitable criteria. The section as written is internally inconsistent as it treats two conflicting states of a WMP as acceptable. On the one hand, requiring that the site be included in a current approved WMP and, on the other, allowing it to be un-approved and only submitted and under review. Requesting an approval is not the same as being approved. This section must be revised to require that only sites covered in an approved and up-to-date WMP meet the requirements at N.J.A.C. 5:97-3.13(a)3.

RESPONSE: The Council has historically accepted, for purposes of demonstrating site suitability and realistic opportunity, a site that is the subject of an amendment to the water quality management plan so that the timeframe for approvals of such amendments does not delay the affordable housing planning process. The Council will amend the

rules in the near future to provide for durational adjustments in the third round. However, the commenter should note that durational adjustments are granted on a site specific basis and only in cases where water and sewer capacity is expected to be made available in the near future.

N.J.A.C. 5:97-3.13(a)4

COMMENT: This sentence should be reworded to read: "The site can be developed substantially consistent with the Residential Site Improvement Standards." The RSIS permits waivers either by the local approving authority or the State itself, which should be recognized in this standard.

RESPONSE: The rule will be amended in the near future to clarify the RSIS permits waivers pursuant to N.J.A.C. 5:21-3.

N.J.A.C. 5:97-3.13(b)

COMMENT: Something regarding site contamination remediation should be included here, such as "the site shall have a Work Plan approved by NJDEP, or the equivalent plan from the U.S. EPA as the case may be, which demonstrates the project can be built and occupied during the substantive certification period."

RESPONSE: The Council does not believe that the additional language is necessary. N.J.A.C. 5:97-3.13 requires that affordable housing sites shall be available, approvable, developable and suitable and shall be in compliance with the rules or regulations of all agencies with jurisdiction over the site. Any approvals required by NJDEP or the U.S. EPA for the remediation of contaminated sites would be covered by the existing provision. The Council encourages municipalities to work the DEP and the EPA to ensure that brownfields sites meet COAH's site suitability criteria in N.J.A.C. 5:97-3.13. In addition, municipalities may access the collective powers of State agencies to expedite brownfields redevelopment through the Brownfield Redevelopment Interagency Team (BRIT) process of the Department of Community Affairs' Office of Smart Growth.

COMMENT: If sites are proposed by developers in areas that are not sewered or included in the 208 Plan as a sewer extension area, they should provide evidence that the project is able to receive permitting from the County Health Department or NJDEP as the case may be prior to any certification or inclusion in the plan.

RESPONSE: The Council does not believe that it is reasonable to require such evidence at the time of petition but will monitor permitting status at the time of first plan review pursuant to N.J.A.C. 5:96-10 and throughout the period of substantive certification.

COMMENT: There are hundreds of thousands of acres of active farms in Planning Areas 1 and 2, frequently the most productive and viable in the State. COAH must require municipalities to weigh their priorities before they seek to acquire farmland for other than agricultural purposes. The commenter supports requiring any municipality seeking to use sites in Planning Areas 3, 4, and 5 for inclusionary housing to demonstrate that such use is "consistent with sound planning principles" so long as those principles include use of clustering and lot-size averaging as the preferred form of new development. Otherwise, new development cuts up existing productive farms and produces more sprawl.

RESPONSE: The Council recognizes the importance of preserving the most productive and viable farmland in the State and believes that zoning techniques designed to preserve such land should be encouraged and are consistent with sound planning principles. The purpose of the vacant land analysis was to determine the availability and capacity of vacant land to support additional growth based on the regulations of all agencies with jurisdiction over these lands. COAH supports the objective of retaining economically productive agricultural land uses and does not dictate specific locations for affordable housing. It is the municipality's responsibility to develop an appropriate affordable housing plan and municipalities are encouraged to consider retention of agricultural lands as part of their broader land use planning. In a future amendment, the Council will strengthen its rule to require that clustering, lot size averaging and/or attached

housing be permitted in inclusionary zones.

COMMENT: This section limits the historic or architecturally important sites and districts to those on the State or National Register, but this does not account for sites/areas/places that the municipality has otherwise identified as having historical or architectural significance. Sometimes, with limited resources, communities have not been able to include all possible sites on the list, but they should not be forced to use these places as "suitable" for development when it could go against the municipality's vision or character.

RESPONSE: The Council recognizes that there may be historic and architecturally important structures other than those listed on the State or National Register of Historic Places but believes that those listings serve as an appropriate standard for site suitability analysis. However, N.J.A.C. 5:97-3.13(b)5 states that, within historic districts, a municipality may regulate low- and moderate-income housing to the same extent it regulates all other development.

N.J.A.C. 5:97-3.13(b)1

COMMENT: Please delete "or located in an existing sewer service area." To employ existing sewer service areas (SSAs) as criteria for development is fraught with problems. It is widely recognized that SSAs were often improperly or inappropriately drawn, are out-of-date and may not meet current DEP or local standards. The DEP is gradually revising the SSAs, reducing them in size. Growth areas assumed by COAH include not only the sewer service areas in Planning Areas 1 and 2, but also the vast (and soon to be removed) SSAs that have been "on the books," but unsewered, for many years. As NJDEP promotes State Plan policies to protect the environs by better managing wastewater treatment for growth areas and Centers, the presumed growth capacity of these disappearing SSAs will disappear as well, and the proposed rules would then concentrate too much growth on too little usable land. In the Highlands, all SSAs in the Preservation Area were pulled back by the DEP Highlands rules to the limits of existing development served. In the Planning Area, the Highlands Council has determined that "pipes in the ground" are the criteria by which proposed sewer service will be judged, not the previously delineated sewer service areas.

RESPONSE: Over the course of several meetings and discussions with the N.J. Department of Environmental Protection, they identified several wastewater treatment facilities that had current capacity constraints, others where expansion might be constrained in the future because of discharge stream conditions, and others that would have little or no problem with future expansions. Efforts were described as being underway to resolve several of the largest current capacity problems through repairs and improvements to old and damaged collection systems, upgrades and/or expansions of the sewage treatment plants themselves. These large investments will take several years to produce results, but when completed the facilities would be able to meet projected build-out demand. Several other facilities could reach capacity over the near term if historical growth rates continue, and they will likely require costly upgrades in treatment technology, use of distributed treatment works, consideration of beneficial gray water reuse and other alternatives to meet long-term projected demand. Funds could be available through the New Jersey Environmental Infrastructure Trust, which has provided more than $ 4.3 billion in low interest long-term loans over the past 20 years to fund drinking water, wastewater and storm water projects. For these reasons, a more in-depth analysis is needed to determine the most cost effective and environmentally sound wastewater management alternative to meet potential long-term build-out demand. A further assessment will then be required to determine whether those costs can be sustained by the existing and future users of those facilities, consistent with the notion of providing "affordable" housing. This assessment is required through the development and adoption of wastewater management plans under the pending Water Quality Management Planning (WQMP) Rules. The pending WQMP Rules will require that each of the 21 counties in the State develop a comprehensive long-term wastewater and water management plan to replace the 190 plans now in use, the overwhelming majority of which are out of date. These plans will be required to address any inconsistencies between build-out demand versus treatment capacity and water availability. Ultimately, these plans will inform the vacant land and development capacity analysis prepared by COAH. Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, COAH's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The consultants are further updating this data to incorporate the estimated impacts of

pending DEP Water Quality Management/Wastewater Management Plan Rules changes, using the same methodology as being employed to revise development capacity estimates across the rest of the State. These lower development capacity estimates will be used by COAH's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole. Residential development capacity in the Preservation Area is largely the result of the availability of exemptions for hundreds of small grandfathered lots.

COMMENT: Although the commenter generally supports growth being directed to Planning Areas 1 and 2 and Centers, it must nevertheless be recognized that even so, there can be environmental, cultural or historic resources that make any development, including affordable housing, inappropriate.

RESPONSE: The Council recognizes that site suitability should be demonstrated on a site specific basis. Sites designated to produce affordable housing must be available, approvable, developable and suitable pursuant to the criteria provided in N.J.A.C. 5:97-3.13. The site must comply with the rules and regulations of all agencies with jurisdiction over the site and be consistent with the State Development and Redevelopment Plan.

N.J.A.C. 5:97-3.13(b)1 and 2

COMMENT: This is an important section, but in reality has little practical meaning for many reasons, including, but not limited to: 1) the required review and update to the State Development and Redevelopment Plan (SDRP) is long overdue, with no realistic time schedule in sight for completion; 2) interpretation of the SDRP is extremely subjective; 3) in many cases, municipalities lack the legal tools to effectively comply with the SDRP and to limit or prevent development in Planning Areas 3, 4, 4B, 5 or 5B; 4) the limitations on regional contribution agreements limit the development of affordable housing sites in Planning Areas 1 and 2; and 5) the strong disincentives in the rules against the use of payments in lieu to provide affordable housing in off-site locations (such as designated centers or existing sewer service areas) discourage compliance with the SDRP.

RESPONSE: The State Planning Commission expects to adopt an updated State Development and Redevelopment Plan by the end of 2008. The Council recognizes the State Plan as a policy document and does not intend to use the Plan as a regulatory tool, but rather as a guide in evaluating the suitability of affordable housing sites. As stated by the Appellate Division's decision: "COAH is required to consider pertinent information from studies, government reports, and information from other branches of government, including data from the State Planning Commission. . .It can, however, adopt any approach or school of thought espoused by experts in relevant fields based on its determination of the appropriate response to the constitutional obligation and the purposes of the FHA. *Hills Dev. Co. Township of Bernards, supra*, 103 *N.J.* at 33." *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1, 22 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007). In accordance with the site suitability provisions at N.J.A.C. 5:97-3.13, the Council reviews all sites designated to produce affordable housing for consistency with the State Development and Redevelopment Plan and other applicable regulations. In keeping with the policies of the SDRP, COAH identifies Planning Areas 1 and 2, designated centers, and existing sewer service areas as preferred location for affordable housing sites but does not mandate these locations. The Council encourages center-based development in rural municipalities outside of PA 1 and 2. The cap on regional contribution agreements is established by the Fair Housing Act. The reduced incentive for the use of the payment in lieu option will be deleted from the rule in a future amendment.

COMMENT: It is ironic that this is the only rule or law in New Jersey that requires a specific land use, in this case affordable housing, to comply with or demonstrate consistency on a site-specific basis with the State Development and Redevelopment Plan. A cul-de-sac of McMansions or a new regional mall need not demonstrate consistency with the State Development and Redevelopment Plan in order to obtain land use approvals from local governments. The irony is compounded as COAH's regulatory use of the State Plan, that is, identifying a "preferred location" for affordable housing sites in terms of Planning Areas 1 or 2 or a Designated Center, is contrary to the intent of the State Planning Commission, which stated in the 2001 State Plan that "The State Plan is a statement of state policy formulated to guidepolicy, not regulation." 2001 State Plan, at page 111.

RESPONSE: The commenter is correct in stating that the State Plan is a policy document. The Council does not intend to use the Plan as a regulatory tool, but rather as a guide in evaluating the suitability of affordable housing sites. As stated by the Appellate Division's decision: "COAH is required to consider pertinent information from studies, government reports, and information from other branches of government, including data from the State Planning Commission. . .It can, however, adopt any approach or school of thought espoused by experts in relevant fields based on its determination of the appropriate response to the constitutional obligation and the purposes of the FHA. *Hills Dev. Co. Township of Bernards, supra*, 103 *N.J.* at 33." *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1, 22 (App. Div. 2007), *certif. denied*, 192 N.J. 71 (2007). In accordance with the site suitability provisions at N.J.A.C. 5:97-3.13, the Council reviews all sites designated to produce affordable housing for consistency with the State Development and Redevelopment Plan and other applicable regulations. In keeping with the policies of the SDRP, COAH identifies Planning Areas 1 and 2 and designated centers, as well as existing sewer service areas, as preferred locations for affordable housing sites but does not mandate these locations.

N.J.A.C. 5:97-3.13(b)2

COMMENT: This provision leaves too much to chance and judgment by the Council. This rule should be changed to provide that inclusionary zoning must be located in PA 1 or PA 2 or a center unless the State Planning Commission authorizes a waiver based on explicit criteria written to ensure consistency with the purposes of the State Plan.

RESPONSE: The Council believes that such a provision would substantially delay review of municipal Fair Share Plans and unnecessarily prolong the substantive certification process. A municipality that petitions the Council for substantive certification has the responsibility to demonstrate compliance with N.J.A.C. 5:97-3.13(b), which requires that sites designated to produce affordable housing be consistent with the SDRP and with the rules of all agencies with jurisdiction over the site. The Council believes that in many cases, the documentation submitted will be sufficient to determine compliance. If, for example, a proposed affordable housing site is located within Planning Area 1, consistent with an existing up-to-date wastewater management plan, and is otherwise suitable, the Council does not believe it should be required to seek a recommendation from other regulating agencies. However, if the Council determines that the documentation submitted by the municipality is not sufficient to clearly demonstrate compliance, N.J.A.C. 5:97-3.13(c) gives the Council the discretion to seek guidance from other applicable agencies and to require the submission of all necessary documentation to those agencies to determine compliance. In many instances, this process would most appropriately be coordinated through the Office of Smart Growth. COAH intends to work cooperatively with the State Planning Commission and to update the Memorandum of Understanding in the near future.

N.J.A.C. 5:97-3.13(b)3

COMMENT: The references to a DEP division and rules are more than a decade out of date and do not evidence close coordination between COAH and DEP. Delete the reference to the "Division of Coastal Resources," which no longer exists, and refer instead to just DEP, or perhaps to the "Division of Land Use Regulation of DEP." Delete the reference to DEP's Coastal Permit Program Rules, N.J.A.C. 7:7, as those procedural rules provide no substantive standards for reviewing proposed sites for affordable housing. Update the name of DEP rules codified at N.J.A.C. 7:7E to "Coastal Zone Management," and not "Coastal Resource and Development Rules."

RESPONSE: The Council appreciates the commenter's assistance and the rule has been clarified as to the Division name and chapter heading. After consultation with DEP, the Council determined that the Coastal Permit Program Rules, N.J.A.C. 7:7, are still relevant and should be referenced in this provision.

COMMENT: The regional planning agencies noted in the COAH regulation have failed to adopt regulations guiding municipal affordable housing compliance. Therefore, almost no affordable housing has been produced throughout significant portions of the State despite unprecedented market-rate residential and commercial growth. COAH must interact with these regional planning agencies to ensure that they comply with their constitutional affordable housing obligations so that the municipalities under their jurisdiction can address affordable housing

mandates.

RESPONSE: The Council intends to work cooperatively with other State and regional agencies. The Council currently has memoranda of understanding with the State Planning Commission, the Pinelands, the New Jersey Meadowlands Commission (NJMC), and the N.J. Department of Environmental Protection, all of which the Council intends to update and expand. The rule itself will be amended in the near future to create opportunities for municipalities to work with regional planning commissions and authorities to address affordable housing obligations on a regional level and to expand the provisions for affordable housing partnership programs to create such opportunities. The NJMC previously adopted regulations on affordable housing that became effective February 5, 2007, and which were stayed on March 12, 2007, pending COAH's proposal per the Court. The NJMC has indicated that it will reinstitute these rules, with corresponding amendments, after the effective date of COAH's proposed rules. In addition, the Council intends to enter into a memorandum of understanding with the Highlands Council in the near future.

COMMENT: The DEP requests correction of reference to DEP programs. N.J.A.C. 5:97-3.13(b)3 should read: Sites within the areas of the State regulated by the Pinelands Commission, Highlands Water Protection and Planning Council, Land Use Regulation Division of DEP and the New Jersey Meadowlands Commission, shall adhere to the land use policies delineated in The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50; The Highlands Water Protection and Planning Act rules, N.J.A.C. 7:38; the Coastal Permit Program Rules, N.J.A.C. 7:7; the Coastal Zone Management Rules, N.J.A.C. 7:7E; the Flood Hazard Area Control Rules, N.J.A.C. 7:13; the Freshwater Wetlands Protection Act Rules, 7:7A, the Stormwater Management rules, N.J.A.C. 7:8 and the Zoning Regulations of the New Jersey Meadowlands Commission, N.J.A.C. 19:3, where applicable.

RESPONSE: The Council appreciates the commenter's input. The DEP references have been corrected in the rule.

COMMENT: COAH should not defer to the Highlands Council within the Planning Area unless the municipality has opted into the Highlands Regional Master Plan.

RESPONSE: The provisions cited by the commenter require adherence to the Highlands Water Protection and Planning Act rules, not the Highlands Regional Master Plan. The 88 towns located within the Highlands region continue to have a constitutional obligation to provide for affordable housing, within constraints imposed by the Highlands Act. The Council has updated its methodology to include data provided by the Highlands Council, thereby making the projections for the Highlands municipalities more realistic and attainable.

COMMENT: Within the Highlands Region, the proposed rules unnecessarily restrict the criteria for determining site suitability based on the rules at N.J.A.C. 7:38. N.J.A.C. 7:38 includes development standards that are only applicable to the Preservation Area of the Highlands Region. The rules do not acknowledge the standards in the Highlands Regional Master Plan that will apply to the entire Highlands Region. With regard to the Highlands Act and Highlands Regional Master Plan, COAH should acknowledge a Planning Area municipality's use of the data contained in the Highlands Regional Master Plan for any land capacity or environmental analysis shall not be predicated on its "opting-in" to the Regional Master Plan.

RESPONSE: The Council notes that, as of the date of this rule adoption, the Highlands RMP is in draft form and has not been adopted. Upon adoption of the Highlands RMP, the Council will consider its impacts. COAH intends to work cooperatively with the Highlands Council to enter into a Memorandum of Understanding in the near future. However, the commenter should note that the growth share obligations of Highlands municipalities are clearly set forth in the rules and appendices. Further, the 88 towns located within the Highlands region continue to have a constitutional obligation to provide for affordable housing, within constraints imposed by the Highlands Act. The Council has updated its methodology to include data provided by the Highlands Council, thereby making the projections for the Highlands municipalities more realistic and attainable. Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, COAH's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The

consultants are further updating this data to incorporate the estimated impacts of pending DEP Water Quality Management/Wastewater Management Plan Rules changes, using the same methodology as being employed to revise development capacity estimates across the rest of the State. These lower development capacity estimates will be used by COAH's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole.

COMMENT: Please add the following additional State and Federal agencies whose land use plans and policies should be adhered to by COAH developments: the N.J. Department of Transportation Scenic Byways Program, DEP Management Plans for State forests, parks and wildlife management areas, Federal Wild and Scenic Rivers Program Management Plans for National Wild and Scenic Rivers in New Jersey; the Appalachian National Scenic Trail Corridor Plan; and Management Plans for all other Federal lands in New Jersey, including National Wildlife Refuges, National Parks, Recreation Areas, Historic Sites, and Heritage Corridors.

RESPONSE: The provision is not intended to provide an exhaustive list of agencies. The introductory language at N.J.A.C. 5:97-3.13(b) states that affordable housing sites shall conform to the rules and regulations of all agencies with jurisdiction over the site, "including, but not limited to:. . .". The State and Federal agencies noted by the commenter, although not specifically listed in the provision, are still relevant to site suitability in cases where they have jurisdiction over a particular site.

COMMENT: The commenter supports the language of this provision, which references conformance to the rules and regulations of other State agencies as a measure of site suitability, and encourages more discussions between relevant state agencies.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-3.13(b)4

COMMENT: This list of regulated constraints is also incomplete. The commenter requests the following additions: DEP Stormwater rule constraints, including riparian buffer protections, groundwater recharge areas, surface water intake sites, and Natural Heritage Priority Sites, as well as NJDEP Landscape Project Areas 3, 4 and 5, which constitute the habitat of State Threatened and Endangered Species, and the habitat of federally Threatened and Endangered Species, whose habitat is protected by federal law.

RESPONSE: The provision is not intended to provide an exhaustive list of regulations. N.J.A.C. 5:97-3.13(b) states ". . .including, but not limited to:" and therefore the Council does not believe the additional language is necessary. All affordable housing developments must meet the site suitability standards of N.J.A.C. 5:97-3.13, which require compliance with the rules and regulations of all agencies with jurisdiction over the site, as well as consistency with the State Development and Redevelopment Plan. However, the Council notes that several of the additions requested by the commenter do not reflect regulatory constraints that would necessarily prohibit or constrain development on a site.

COMMENT: All local environmental protection ordinances should be fully respected by COAH and should be recognized on this list. The commenter requests the following additions to the rule: wellhead protection, stream corridor protection, groundwater recharge areas, surface water intake sites, woodland/tree protection, riparian corridors, scenic roads, ridgeline protection, impervious cover limits, minimum developable area, and wildlife habitat management plans. These local standards safeguard public health, safety and welfare, counteract global climate change, and enhance quality of life for local residents and visitors alike.

RESPONSE: The provision is not intended to provide an exhaustive list of regulations. N.J.A.C. 5:97-3.13(b) states ". . .including, but not limited to:" and therefore the Council does not believe the additional language is necessary. All affordable housing developments must meet the site suitability standards of N.J.A.C. 5:97-3.13, which require compliance with the rules and regulations of all agencies with jurisdiction over the site, as well as consistency with the

State Development and Redevelopment Plan. However, the Council notes that several of the additions requested by the commenter do not reflect regulatory constraints that would necessarily prohibit or constrain development on a site.

COMMENT: The 15 percent slope restriction should apply whether or not there is a municipal ordinance in place. Steep slopes that are inappropriately developed pose a threat to the health and safety of both the public and local residents, and COAH should neither permit nor encourage development that poses such a threat.

RESPONSE: The Council believes that affordable housing should be permitted to be developed where market rate housing can be developed. If a municipality determines that it is appropriate for development to occur on steep slopes, then affordable housing should not be excluded from those areas. If, on the other hand, a municipality restricts development in steep slope areas, then affordable housing should be subject to those same restrictions. A municipality may impose an ordinance that uniformly regulates steep slopes in the municipality.

N.J.A.C. 5:97-3.13(c)

COMMENT: The commenter strongly supports this requirement so long as the "appropriate agency" includes the NJ Department of Agriculture, the State Agricultural Development Committee and/or the County Agriculture Development Board, those with the most knowledge of where the most productive parcels of farmland are located. They will have the current county and municipal Agricultural Retention Plans upon which all efforts to preserve farmland are to be based.

RESPONSE: The Council intends to work cooperatively with all other State agencies, including the N.J. Department of Agriculture.

COMMENT: The rule requires the municipality to provide "all necessary documentation" to prove site suitability. The rules also provide that COAH "may require the municipality to submit all necessary documentation to the agency so that a review and decision regarding the suitability of any site may be completed." The requirement should pertain to the owner or applicant of a site, at the development review stage of a project, not to the municipality in preparing a housing

RESPONSE: While the developer is creating an affordable housing obligation, it is the municipality that has the obligation to provide the affordable housing. The municipality is requesting credit for constructed units and the municipality if seeking substantive certification from The Council. Therefore, the Council will request the required information from the municipality. The municipality is encouraged to work cooperatively with the developer to obtain the necessary information.

COMMENT: Several commenters indicated that N.J.A.C. 5:94-3.13(c) must require that the Council receives a recommendation, not just that it "may seek a recommendation." One suggested that the Council develop a MOA or MOU with relevant State agencies that establishes a process for screening the suitability of potential COAH sites within their jurisdiction. Another requested that, in order to minimize the impact on other State programs and initiatives, the Council should be required to seek a recommendation from the other relevant State agencies and departments through the Office of Smart Growth, as many State agencies are currently implementing smart growth policies and strategies and are represented on the various committees and working groups of that office.

RESPONSE: A municipality that petitions the Council for substantive certification has the responsibility to demonstrate compliance with N.J.A.C. 5:97-3.13(b), which requires that sites designated to produce affordable housing are consistent with the SDRP and with the rules and regulations of all agencies with jurisdiction over the site. The Council believes that in many cases, the documentation submitted will be sufficient to determine compliance. If, for example, a proposed affordable housing site is located within Planning Area 1, consistent with an existing up-to-date wastewater management plan, and is otherwise suitable, the Council does not believe it should be required to seek a recommendation from other regulating agencies. However, if the Council determines that the documentation submitted

by the municipality is not sufficient to clearly demonstrate compliance, N.J.A.C. 5:97-3.13(c) gives the Council the discretion to seek guidance from other applicable agencies and to require the submission of all necessary documentation to those agencies to determine compliance. In many instances, this process would most appropriately be coordinated through the Office of Smart Growth. COAH intends to work cooperatively with the State Planning Commission and to update the Memorandum of Understanding in the near future.

N.J.A.C. 5:97-3.14

COMMENT: As drafted, this proposed rule purportedly applies to all new townhouse units and all other new multistory units, not just to such units with affordable housing for which credits are sought by municipalities under the Fair Housing Act, as the current rule states, at N.J.A.C. 5:94-4.21(a). To avoid confusion and comply with the Fair Housing Act, the rule should be amended to be limited to such units with affordable housing where credits are sought under the Fair Housing Act.

RESPONSE: The rule will be clarified in a future rule amendment to reflect the commenter's concerns.

COMMENT: Is a second floor in a mixed-use building, where the first floor is retail, the first floor of a townhouse unit? If it is defined as such, the rule will mean that an elevator will be required in all mixed-use downtown affordable housing units. This does not encourage traditional mixed use development within small downtowns with retail and office uses on the first floor and residential uses above. If each unit "on the first floor of the townhouse development" is defined to not be the first floor of the building, which is amazingly how some in DCA have defined this section, the second story, residential portion of the building would generally need an elevator. Perhaps a threshold clause could be added, that says any mixed use developments that include townhouse unit on the second floor of the building of four units or more shall be subject to the Barrier Free Subcode rules at N.J.A.C. 5:23-7 rather than for each unit.

RESPONSE: The rule does not require that a building install an elevator in order to comply with the adaptability requirement. The definition of "ground floor dwelling unit" is taken from the regulations for the Federal Fair Housing Amendments Act/1988. The regulations were published in 1991 and this has been the definition for 17 years. Residential units on top of retail where there are four or more units in a single structure have been required to be accessible since that time. The change in this statute is that the application is extended to ground floor dwelling units that attached to at least one other dwelling unit where those units are COAH units.

COMMENT: The commenter urges COAH to consider conducting a study to evaluate the extent to which affordable housing needs to be handicapped accessible. A blanket requirement that all affordable unit entrances be handicapped accessible, or that the developer provide funds equal to 10 percent of the cost to make all affordable unit entrances accessible, will probably create unnecessary costs and expenses to a municipality.

RESPONSE: Because the enabling legislation for the Barrier Free Subcode set the threshold for accessible multifamily dwellings at structures with four or more dwelling units and because most affordable housing are townhouses, which are exempt from the Barrier Free Subcode, and because people with disabilities are disproportionately of low or moderate income, the Legislature determined that, as a matter of public policy, townhouses and multistory dwelling units must be available to all low and moderate income people, both able-bodied and disabled. The statute provides and the rules require the provision of adaptable features on the first floor of such units at the time of construction, as well as funds sufficient to adapt 10 percent of the units that have not been constructed with accessible entrances. Upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance would be installed using those funds.

COMMENT: N.J.A.C. 5:97-3.14(a) and (b) seem to require that all new townhouse and multistory dwelling units have a handicapped adaptable first floor - not just affordable units. However, subsection (d) seems to apply only to affordable units. Which is intended? The commenter understands that if in an inclusionary development the affordable units are not physically distinguished from the market-rate units, so that a low or moderate income renter or buyer

should be able to rent or buy whatever unit is available, it would be desirable that all first floor units be adaptable. However, in some inclusionary developments the affordable units are in specific buildings. Is the intent of this regulation to require that all units in any inclusionary development have adaptable first floor units, or just the affordable units? And why is the date after which units must meet this requirement October 1, 2006, more than a year ago? The commenter recommends firstly that it be made clear that this requirement applies only to affordable units, and secondly that the date of applicability be the date this regulation becomes final. It would be unfair to disqualify a whole development because its approval, before this requirement was published, does not contain this requirement.

RESPONSE: The commenter is referring to a provision within a section headed "Accessible and adaptable affordable units," which is intended by the Council to apply only to affordable units being used to meet a municipal affordable housing obligation in a fair share plan. Similar rule amendments were proposed on July 23, 2007, in direct response to amendments to the Fair Housing Act made by the Legislature, which require an adaptable entrance and an accessible interior route of travel and establish October 1, 2006, as the cutoff date.

COMMENT: This section also requires all multi-story dwelling units and townhouses to be Americans with Disabilities Act (ADA) accessible. This places an undue burden on developers, as the likelihood of all of the COAH units being utilized by a handicapped person is slim. It is more reasonable to only require a certain percentage of the COAH units to be ADA accessible.

RESPONSE: The rule as written codifies P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.), which requires that all new townhouse units and new attached multistory units be handicapped adaptable. Because new townhouse units and other new attached multistory dwelling units are not required to be accessible under the Barrier Free Subcode, N.J.A.C. 5:23-7, or the ADA, the Council is requiring the provision of adaptable features on the first floor of such units at the time of construction, as well as funds sufficient to adapt 10 percent of the units that have not been constructed with accessible entrances. Upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance would be installed using those funds. It should be noted that affordable units are required to be available to all low and moderate income people, whether able-bodied or disabled.

COMMENT: The rule, as written, could include accessory apartments, since an accessory apartment as defined could be a new multi-story dwelling unit, attached to at least one dwelling unit. This should be clarified. Do accessory units need to meet the accessible and adaptive requirements?

RESPONSE: An accessory apartment that is created from a preexisting structure does not have to meet the adaptability requirements under the rule. If the accessory apartment is a new structure attached to another dwelling unit, it must meet the requirements of the rule.

COMMENT: The new rules give developers an inordinate amount of latitude to expedite their approval process at the expense of the municipalities; an expense this town cannot sustain. Under the rules, all multi-family structures are required to have accessible and adaptable units on the first floor, and developers can bond the work and pass the practical responsibility onto the Borough. But, the rules do not clearly indicate who quantifies the cost of this work, which will be different for every project and which will change/increase with time. Municipalities do not have the resources to assume this responsibility and a developer's estimate of the cost is sure to vary significantly from a municipality's estimate, since municipalities must follow public procurement procedures and developers do not need to utilize competitive bidding.

RESPONSE: When the construction documents are submitted to the local enforcing agency, to ensure that the adaptation meets code, the plans for the adaptation of the entrance must also be submitted. At that time, an estimate for making the adaptation is also submitted. The construction official evaluates the estimate. This is an ordinary part of the code official's duties. Permits are based on the cost of construction and estimates are a daily part of the work review. The amount of the estimate given at the time of the plan submittal, once accepted as reasonable by the construction official, is deposited into the municipal affordable housing trust fund. Additional funds are not required, even if the cost

of adapting the entrance changes.

N.J.A.C. 5:97-3.14(e)

COMMENT: To the greatest extent possible, all affordable units, including rehabilitated units, should be accessible by disabled persons, as consistent with the ADA statute. The commenter supports strengthening this component of this policy.

RESPONSE: P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) requires only that newly constructed townhouse and new multistory dwelling units be adaptable or accessible. Monies from a municipal affordable housing trust fund may be used to provide a handicapped occupant of a rehabilitated unit with the necessary features.

N.J.A.C. 5:97-3.15

COMMENT: New Jersey's Office of Smart Growth has produced a smart growth plan for the State, but municipalities are not required to tie their development plans to it. In the absence of a State requirement to this effect, COAH should explore ways to encourage municipal housing plans to meet the objectives of this smart growth plan. In particular, very low-income housing should be considered part of any such tie-in.

RESPONSE: The commenter should note that N.J.A.C. 5:97-3.13(b) requires that sites designated to produce affordable housing be consistent with the SDRP and with the rules and regulations of all agencies with jurisdiction over the site. In addition, the rules now include an incentive for the production of very low-income housing in the form of a bonus credit under N.J.A.C. 5:97-3.7.

COMMENT: This rule fails to recognize and acknowledge that municipalities may "voluntarily" comply with their affordable housing mandates by having the Superior Court review and approve their Compliance Plans by filing declaratory judgment proceedings pursuant to N.J.S.A. 52:2D-313a. The proposed rule should be revised to address the foregoing.

RESPONSE: The Council does not believe that the revision is necessary. The option available to municipalities to seek Court approval of its Fair Share Plan is implicit throughout the Council's rules.

COMMENT: There are some key issues pertaining to TDR, which is an approach to development in rural areas that the OSG and Highlands Council strongly endorse. To begin with, if 20 percent of the constructed units have to be affordable, and the developer is already having to buy expensive development rights in order to develop his property, the provision of the full 20 percent set-aside may be difficult to accomplish in view of all of the other development objectives the municipality and OSG/Highlands Council will be looking to fulfill. At the very least, there should be a provision for a 15 percent set-aside for rental units (and this might be appropriate in transit villages, as well). Additionally, in order to make TDR work, municipalities will be converting the development right to one single-family dwelling in the sending area into single-family equivalents (that is, perhaps three apartments or 1.5 townhouses as the equivalent of one single-family dwelling) within the receiving area. This is not really a density bonus, since the smaller units will not sell for as much money. It is a mechanism for fitting the extra units on the receiving site and still leaving substantial open space, which is something the State is looking to accomplish in rural areas. Nevertheless, if the growth share obligation is going to be based on the received single-family equivalents rather than on the transferred single-family units, the town will have a bigger growth share obligation and the developer will have a bigger set-aside requirement. This is a potential deterrent to both municipalities and developers for participating in TDR. Perhaps a constructive alternative would be to allow the growth share obligation for low and moderate income housing to be determined and met based upon 20 percent (or 15 percent, in the case of rental units) of the transferred and as-of-right units and then require the developer to provide some lesser percentage (say, 10 percent) of the additional number of units to be constructed (due to the conversion of single-family units to single-family equivalents) as middle income or workforce housing at 80 to 100 percent or 80 to 120 percent of median income. This gives the developer a bit of a

break, addresses the Governor's and Commissioner's commitment to creating workforce housing opportunities, and helps to justify the fact that, to do TDR well and overcome local opposition, towns will be looking for a higher quality of development within the receiving zone (not going beyond RSIS standards, but design and architectural controls).

RESPONSE: The Council appreciates the commenter's concern. The commenter should note that pursuant to the Municipal Land Use Law (MLUL), municipalities considering a TDR program are required to get approval from the State Planning Commission (SPC). The Council intends to work cooperatively with the SPC and will revise its Memorandum of Understanding with the SPC in the near future. Also, pursuant to the MLUL, approval of a TDR program is predicated on the viability of the TDR plan. A municipality would have to demonstrate that an inclusionary development is realistically achievable within a TDR program. COAH recognizes that this will be challenging and will work with municipalities that are considering a TDR program. In addition, the consititutional obligation to provide affordable housing still exists for municipalities with or considering TDR programs and there are many options municipalities can choose from to address this obligation. The Council will also amend its rules in the near future to provide a Smart Growth bonus for affordable units created in PA 1, 2 or Designated Centers as part of a Transit Oriented Development.

COMMENT: Please describe how the economic feasibility of the development will be examined. Please also indicate whether feasibility includes consideration of use of available public subsidies, including municipal development fees, fee waivers, density bonuses, and other affirmative measures. Please state whether COAH will require such affirmative measures prior to concluding that a 20 percent requirement is not feasible. If a site is not economically feasible, the appropriate approach is to grant an additional density bonus and/or other cost offset, not reduce the required set-aside.

RESPONSE: The Council expects that a municipality's Fair Share Plan will include information relating to the economic feasibility of such smart growth initiatives. The Council, in consultation with the DCA Division of Housing and/or other State agency as appropriate, will consider indicators such as those noted by the commenter as well as any deemed necessary to determine whether the proposal represents a realistic opportunity for the production of affordable housing.

COMMENT: Please clarify what COAH means by the term "State-funded smart growth initiatives." COAH has indicated that this includes municipalities that are either applying for and are already participating in the DOT transit village program, but please state what other programs are considered to be State-funded smart growth initiatives. Please state in particular whether the following programs are included: (1) DEP's Brownfields Redevelopment and projects in Brownfields Redevelopment Areas; (2) Office of Smart Growth planning grants; (3) New Jersey Meadowlands Commission Redevelopment Areas; (4) projects that receive planning grants from the New Jersey Meadowlands Commission; (5) projects that receive financial support from the Environmental Infrastructure Trust; (6) projects that are not formally designated as transit villages but receive substantial support from the Department of Transportation or New Jersey Transit through, for instance, the development of a transit station adjoining the development; (7) projects that receive State financial support for related infrastructure rehabilitation or development; (8) projects that receive funding, either in grants or loans, from a bi-state agency or the Economic Development Authority; (9) Transfer of Development programs for which Smart Growth grants and Highlands grants are available; and (10) projects that receive funding from the Housing and Mortgage Finance Agency.

RESPONSE: The Council considers the programs listed above to be included as smart-growth initiatives and would therefore expect sites to include a 20-percent set-aside to the extent economically feasible.

COMMENT: The rule requires State-funded smart growth initiatives to require a minimum 20 percent affordable component for residential development. If a housing plan was prepared, and does not require affordable housing on a State-funded smart growth site, does this mean COAH will alter the development plan, require amendment to the municipal housing plan and require such housing? This rule further removes municipal control of land use.

RESPONSE: The Council does not have the authority to require changes in development plans or municipal Fair Share Plans, which are under municipal jurisdiction. The Council does, however, have the authority to decide whether or not an affordable unit or a development that includes affordable units is consistent with the Council's rules and therefore eligible to address a municipality's fair share obligation.

COMMENT: The rule is unclear as to whether or not municipalities are obligated to allow for any compensatory bonus to the developer. For small, rural municipalities, this compensatory bonus is extremely difficult to accommodate and may force us away from implementing a TDR program.

RESPONSE: State-funded smart growth initiatives are not exempt from the compensatory benefit provisions of N.J.A.C. 5:97-6.4(b)2. Further, the zoning provisions of the rules will be amended in the near future to address both zones inside and outside sewer service areas.

COMMENT: The rule is a welcome recognition that State government should capitalize on State investments, such as transit villages, to create needed affordable housing. The rule should be expanded to be applicable to other uses of State assets, such as conveyance of surplus lands and properties, in addition to State-funded smart growth initiatives.

RESPONSE: The Council appreciates the commenter's support. The Council generally considers other uses of State assets to be included as State-funded smart growth initiatives and would therefore expect the sites to include a 20-percent set-aside to the extent economically feasible.

COMMENT: This requirement is too broad and open-ended to be located in this particular set of rules. It should be removed until it is better thought out and/or should be included in NJ DOT's own rules regarding Transit Villages.

RESPONSE: The Council believes that the provision of affordable housing is an integral part of the State's smart growth policies, and that it is reasonable to promote such policies when State funding is involved. Therefore, when a petition for substantive certification includes a State-funded smart growth initiative such as a transit village, the Council expects the municipality to take all steps possible to ensure that any residential development include a 20 percent set-aside for affordable housing. In keeping with smart growth objectives, the rules will be amended in the near future to provide bonuses for affordable housing within Transit Oriented Developments in Planning Area 1, Planning Area 2, or a designated Center.

COMMENT: Although COAH recognizes that the provision of 20 percent affordable housing in DOT transit villages must be analyzed and provided "to the extent economically feasible," COAH should promote such smart growth by allowing an affordable housing setaside less than 20 percent in a transit village to fully address the affordable housing requirement generated by the transit village. No additional obligation should be required to be addressed by the municipality.

RESPONSE: The Council believes that transit villages represent an ideal location for the provision of affordable housing due to their compact development patterns and proximity to public transportation, shops and services, and employment opportunities. Often, to make these projects economically feasible, state funding is included. COAH is cognizant that there are many layers to these types of projects and for that reason and in keeping with smart growth objectives, the rules will be amended in the near future to provide bonuses for affordable housing within Transit Oriented Developments in Planning Area 1, Planning Area 2, or a designated

COMMENT: Non-residential development should be exempt from growth share requirements, and the residential set aside obligation should be exempt from growth share requirements, and the residential set aside obligation should be reduced. The requirement that non-residential development in areas proposed to be designated as transit villages, as well as in other redevelopment areas and smart growth initiatives, be included for growth share purposes undercuts these kinds of initiatives. So does the requirement of a minimum 20 percent setaside. Redevelopment areas, which include virtually all transit villages, are burdened by substantial costs necessitated by infrastructure and other improvements necessary to make the redevelopment area viable. Imposing a substantial affordable housing obligation on top of this

works a significant disincentive to proceed with redevelopment. It would also require that these mixed income developments have a disproportionate amount of affordable housing, in some cases as much as 50 percent, since off-site inclusionary development is not a viable compliance technique for municipalities seeking to satisfy actual growth share and, for redevelopment areas, both residential and non-residential growth share would have to be satisfied on site. In order for smart growth initiatives to be effectuated rather than undermined and for an appropriate mix of affordable and market units to be established, non-residential development in transit villages and other redevelopment areas should be exempt from growth share calculations, and the mandatory set aside should be reduced from 20 percent to 15 percent for the residential component.

RESPONSE: The exemption of third round inclusionary development from the growth share obligation would substantially dilute the affordable housing need and would be inconsistent with the growth share approach, which requires one affordable unit among every five residential units and one affordable unit for every sixteen jobs created. However, to address the commenter's concern, a future rule amendment will provide for a smart growth bonus and a redevelopment bonus to create incentives for affordable housing development within those areas.

N.J.A.C. 5:97-3.16

COMMENT: The Highlands Act addresses the need to coordinate the impact of the Highlands Act upon municipalities by including the clause that "[n]othing in this act shall affect protections provided through a grant of substantive certification or a judgment of repose granted prior to the date of enactment of this act." The COAH rules at N.J.A.C. 5:97 should similarly be clarified to address this statutory protection for Highlands municipalities.

RESPONSE: The Council does not believe this change is necessary. All but 15 of the 299 municipalities participating in the COAH process have submitted third round petitions. COAH's rule requires municipalities to comply with all applicable State regulations when addressing their affordable housing obligations.

COMMENT: The proposed rules need to clarify that COAH will not compel or require a municipality to conform to the State Plan or any other regional plan where that conformance is not a mandatory provision in the applicable statute. Both the State Planning Act and Highlands Water Protection and Planning Act make endorsement and/or conformance with the respective plan a voluntary process. The State Plan is now three years late in releasing an updated State Planning Map based on the results of cross acceptance, and the Highlands Council is also two years late in adopting a Regional Master Plan. It is unlikely that either of these plans will be completed prior to COAH's adoption of the proposed rules. Therefore, until such time as these plans are completed in accordance with their respective legislated mandates, a municipality can not make a determination of whether a Fair Share Plan prepared in accordance with the requirements of these rules satisfy the requirements of either the State Plan or Highlands Regional Master Plan. The proposed rules should be clarified to amend the language at N.J.A.C. 5:97-3.16(a) to exclude reference to encouraging endorsement or requiring the status of an endorsement application and replace that language with "require a municipality to provide a statement of consistency with the State Plan." A clarifying statement should also be provided at N.J.A.C. 5:97-3.16(c) that states "The Council shall not require conformance with a state and/or regional plan where that requirement is not mandatory under the enabling statute."

RESPONSE: The rule will be amended in the near future to only require a status of plan endorsement if an application for plan endorsement is pending at the Office of Smart Growth. The Council's rules encourage, but no longer require, plan endorsement. The Council notes that, as of the date of this rule adoption, the Highlands Regional Master Plan is in draft form and has not been adopted. Upon adoption of the Highlands RMP, the Council will consider its impacts. The commenter correctly notes that both plan conformance through the RMP and plan endorsement through the Office of Smart Growth are voluntary processes.

COMMENT: Although municipal participation in the State Planning Commission (SPC) Plan Endorsement Process is encouraged, no specific references to Highlands Plan Conformance or "Opting-in" by Planning Area Municipalities are included. Guidance is needed regarding how COAH Round three Rules should be applied in the Highlands

Preservation Area and "Opt-In" municipalities versus Planning Area Municipalities. COAH Certification is a requirement of Highlands Conformance; however certain COAH Round three provisions contradict the Highland Act's resource protection and capacity-based growth principles, such as COAH's one-for-one bonus credit above base zoning associated with affordable housing projects. The rules should provide clarity regarding the location of affordable housing within unconstrained Highlands Existing Community Zones and cluster developments in the Conservation Zone. It may be appropriate to identify alternative developer incentives applicable to cluster development in the Highlands, instead of the one-for one bonus units above base zoning. In addition, COAH should require initiation of the Plan Endorsement Process in situations where municipalities have petitioned for prior rounds but COAH substantive certification remains outstanding due to unresolved planning issues.

RESPONSE: Proposed N.J.A.C. 5:97-3.13(b)3 requires that sites within areas regulated by the Highlands Water Protection and Planning Council adhere to the land use policies delineated in the Highlands Water Protection and Planning Act. In addition, proposed N.J.A.C. 5:97-3.16(a) encourages municipalities that have petitioned the Council for substantive certification to seek plan endorsement from the State Planning Commission; however, the Council recognizes that a requirement to initiate the plan endorsement process may postpone a municipality's ability to obtain substantive certification. In cases where a municipality's Fair Share Plan is not realistic in the absence of Plan Endorsement, the Council would require Plan Endorsement as a condition of substantive certification. The 88 towns located within the Highlands region continue to have a constitutional obligation to provide for affordable housing, within constraints imposed by the Highlands Act. The Council has updated its methodology to include data provided by the Highlands Council, thereby making the projections for the Highlands municipalities more realistic and attainable. Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, the Council's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The consultants are further updating this data to incorporate the estimated impacts of pending DEP Water Quality Management/Wastewater Management Plan Rule changes, using the same methodology as being employed to revise development capacity estimates across the rest of the state. These lower development capacity estimates will be used by the Council's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole. The Council notes that, as of the date of this rule adoption, the Highlands Regional Master Plan is in draft form and has not been adopted. Upon adoption of the Highlands RMP, the Council will consider its impacts. In addition, the zoning rule will be revised in the near future to provide minimum presumptive densities by planning area and to require clustering for inclusionary development in areas served by septic systems.

COMMENT: COAH's proposed new rules, compared to the recommendations of the State Plan and the rules of NJDEP, are the latest and most evident reminder that the State promises of coordinated rules and policies among the State departments and agencies has been nothing more than talk. COAH should not adopt new rules until it coordinates the rules with the State Planning Commission and the Department of Environmental Protection to assure that the required affordable housing units can be appropriately, practically and reasonably be provided by municipalities without violating other state rules and policies.

RESPONSE: The NJDEP's pending rules regarding floodplains have been taken into account in COAH's revised rules. Additional amendments to COAH's rules will address DEP's Water Quality Management Rules. The State Planning Commission is expected to adopt an updated Plan by the end of 2008.

COMMENT: The commenter recommends that State Plan endorsement or Highlands Regional Master Plan conformance be required of municipalities in the Highlands Region seeking substantive certification.

RESPONSE: Proposed N.J.A.C. 5:97-3.16(a) encourages municipalities that have petitioned the Council for substantive certification to seek plan endorsement from the State Planning Commission; however, the Council is concerned that a requirement to obtain plan endorsement may postpone a municipality's substantive certification. Further, proposed N.J.A.C. 5:97-3.13(b)3 requires that sites within areas regulated by the Highlands Water Protection and Planning Council shall adhere to the land use policies delineated in the Highlands Water Protection and Planning

Act. As of the date of this rule adoption, the Highlands RMP is in draft form and has not been adopted. Upon adoption of the Highlands RMP, the Council will consider its impacts. COAH intends to work cooperatively with the Highlands Council to enter into a Memorandum of Understanding in the near future.

COMMENT: For Buena, who voluntary has entered the COAH and Plan Endorsement process, is now penalized with "an additional affordable housing number" after expending significant time and resources in order to comply with the Fair Housing Act and COAH mandate. It should be noted that Buena Borough requested a redevelopment area designation from the NJOSG and was denied, yet COAH is promoting affordable housing in redevelopment areas. There seems to be a distinct "disconnection" between both agencies.

RESPONSE: The Appellate Division decision states that "We do not disturb substantive certification approvals granted prior to the issuance of this decision." *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super* 1, 88 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007). The Council has interpreted this language to mean that the substantive certifications for those municipalities (Buena Borough/Atlantic County, Washington Township/Morris County and White Township/Warren County) shall remain in effect under the currently adopted rules. In light of the Council's interpretation, N.J.A.C. 5:94 and 5:95 will not be repealed. The rules will be in place for municipalities that received substantive certification. N.J.A.C. 5:96-16 will be amended in the near future to include a provision for municipalities that received third round substantive certification on or before January 25, 2007 which are still valid. In addition, it is the Council's intent to put in place interim procedures to govern those municipalities at the end of their substantive certification that will require the municipalities to address their remaining obligation for the 2014-2018 period of need. While COAH participates with the Office of Smart Growth in the plan endorsement process, the decisions regarding plan endorsement are made by the State Planning Commission and are thus outside the scope of this rule proposal.

COMMENT: New rules should be promulgated to require the New Jersey Department of Environmental Protection, the Highlands Commission, the New Jersey Department of Transportation, NJ Transit, and the DCA, to expedite the review time for permitting relative to affordable housing developments.

RESPONSE: N.J.A.C. 5:97-10.5 will be clarified in the near future to address the commenter's concern.

COMMENT: The commenter's most serious concern about the rules is the possibility that they will be used to challenge the Highlands Act. The absurdly high affordable housing obligation imposed upon Highlands towns that are not growing because they are protecting New Jersey's water supply puts these communities between a rock and a hard place. These towns do not have the ability to accommodate such large-scale development because they lack the infrastructure and, in many cases, the water supply, and should not try because of their sensitive environmental location. They cannot satisfy these requirements while still staying within economic reality and the environmental restrictions mandated by the Highlands Act. This sets up a situation in which a constitutional crisis could occur, with developers challenging the Highlands Act in court based on affordable housing regulations. If this were to happen, these regulations would not be functioning to ensure affordable housing for the people of New Jersey, but to overturn the legislation that seeks to protect the state's natural resources for public welfare and for future generations.

RESPONSE: Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, COAH's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The consultants are further updating this data to incorporate the estimated impacts of pending DEP Water Quality Management/Wastewater Management Plan Rule changes, using the same methodology as being employed to revise development capacity estimates across the rest of the State. These lower development capacity estimates will be used by COAH's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole. Proposed N.J.A.C. 5:97-3.16(a) encourages municipalities that have petitioned the Council for substantive certification to seek plan endorsement from the State Planning Commission; however, the Council is concerned that a requirement to obtain plan endorsement may postpone a municipality's substantive certification. Further, proposed N.J.A.C.

5:97-3.13(b)3 requires that sites within areas regulated by the Highlands Water Protection and Planning Council shall adhere to the land use policies delineated in the Highlands Water Protection and Planning Act. As of the date of this rule adoption, the Highlands RMP is in draft form and has not been adopted. Upon adoption of the Highlands RMP, the Council will consider its impacts. COAH intends to work cooperatively with the Highlands Council to enter into a Memorandum of Understanding in the near future. The 88 towns located within the Highlands region continue to have a constitutional obligation to provide for affordable housing, within constraints imposed by the Highlands Act. The Council has updated its methodology to include data provided by the Highlands Council, thereby making the projections for the Highlands municipalities more realistic and attainable.

COMMENT: In the interest of ensuring coordination between State agencies determining Statewide land use policy and planning, the commenter recommends that State Plan endorsement or Highlands Regional Master Plan conformance be required of all municipalities seeking substantive certification. Coordination of State agency policies is critical to ensure future growth occurs only where it can be supported by natural systems and built infrastructure. Failure to coordinate affordable housing obligations with the Highlands Regional Master Plan and the State Development and Redevelopment Plan will result in the kinds of delays and court challenges that have, in the past, impeded the construction of affordable units. It is in our collective interest for COAH mandates to be synchronized with Highlands Regional Master Plan and the State Development and Redevelopment Plan so Highlands municipalities, like Tewksbury, can immediately get on with the business of providing "realistic opportunities" to satisfy their actual obligation rather than becoming mired in these unresolved issues.

RESPONSE: The rule will be amended in the near future to only require a status of plan endorsement if an application for plan endorsement is pending at the Office of Smart Growth. The Council's rules encourage, but no longer require, plan endorsement. The Council notes that, as of the date of this rule adoption, the Highlands Regional Master Plan is in draft form and has not been adopted. Upon adoption of the Highlands RMP, the Council will consider its impacts. The commenter correctly notes that both plan conformance through the RMP and plan endorsement through the Office of Smart Growth are voluntary processes.

COMMENT: Certain parts of New Jersey are receiving conflicting direction from various elements of New Jersey government. The comments offered at this time address the proposed COAH rules for the third round. However, it should be made clear that there is a certain amount of conflicting direction coming out of a number of State agencies that makes it difficult at the municipal and county levels to be responsive to both environmental and growth-related issues. The CAFRA rules provide that it is to coordinate its coverage and other aspects of land use regulation with the State Development and Redevelopment Plan. In the case of Planning Area 2 designation in the State Plan, that means a 30 percent impervious coverage limitation for developments under CAFRA jurisdiction unless Centers are approved by the State Planning Commission through the Plan Endorsement process. Within a Center, impervious coverage can go as high as 80 percent. Similarly, if an area falls within Planning Area 1 in the State Plan, impervious coverage can go up to 80 percent as well. Those parts of New Jersey that are not under CAFRA jurisdiction do not have to be concerned about impervious coverage coordination based on either Centers or Planning Area designations. Plan Endorsement is coordinated through the Office of Smart Growth. In that process, municipal plans are reviewed to determine consistency with the State Plan. The Office of Smart Growth gets input on Plan Endorsement from other state agencies and departments, such as DEP, DOT, COAH and CAFRA. There seems to be a lack of coordination on growth-related issues, such as road improvements, affordable housing allocations, environmental regulation and Plan Endorsement. Many of the municipalities has been facing, over the years, very high affordable housing allocations. At the same time, environmental restrictions continue to increase, funding problems have continued for road improvement programs, non-residential growth share proposals have discouraged and will continue to discourage the growth of employment centers and ratables, and impervious coverage limitations have constrained the private development that is supposed to be the catalyst for creating affordable housing. From the perspective of people in this part of New Jersey who are burdened by high commuting costs because of a lack of employment opportunities in Ocean County in particular, it is difficult to understand how we can be expected to continue to do the lion's share of affordable housing without some Statewide infrastructure and regulatory support assistance. Without the recognition by the Office of Smart Growth and

the State Planning Commission that we should be in Planning Area 1, it is clear that we cannot accommodate the growth necessary to support the very high affordable housing obligations placed on us by COAH.

RESPONSE: Comments regarding appropriate planning area and coordination of the Office of Smart Growth plan endorsement process are outside the scope of this rule proposal. With regard to infrastructure support, funds could be available through the New Jersey Environmental Infrastructure Trust, which has provided more than $ 4.3 billion in low interest long-term loans over the past 20 years to fund drinking water, wastewater and storm water projects.

COMMENT: COAH regulations should more closely follow the SDRP and not ignore the land use policies within the State Plan. The State's adopted policies require all State agencies, including NJDCA and COAH, to follow the State Development and Redevelopment Plan. The *Mount Laurel II* decision requires affordable housing policies to conform to the State Plan and provide for affordable housing in growth areas. COAH, OSG and NJDEP (together with other State agencies) should more carefully coordinate their respective policies pursuant to the State Plan rather than advocate excessive goals and objectives that are unrealistic and inconsistent with the State Plan.

RESPONSE: The Council intends to continue working cooperatively with other State agencies and to provide clear direction to municipalities on affordable housing policy goals. The Council currently has memoranda of understanding with the State Planning Commission, the Pinelands, the Meadowlands, and the N.J. Department of Environmental Protection, all of which the Council intends to update and expand. In addition, the Council intends to enter into an MOU with the Highlands Council in the near future. In accordance with the site suitability provisions at N.J.A.C. 5:97-3.13, the Council reviews all sites designated to produce affordable housing for consistency with the State Development and Redevelopment Plan and all applicable NJDEP regulations. The Council also encourages center-based development and other forms of compact development. In keeping with smart growth objectives, the rules will be amended in the near future to provide bonuses for affordable housing within Transit Oriented Developments and redevelopment areas. COAH's consultants have been working with NJDEP to incorporate additional information with regard to increasing the size of certain stream buffers and refining where development may be permitted within floodplain areas, both of which are regulated by the recently adopted Flood Hazard Control Act. In addition, they are updating the vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rule changes. DEP is currently reviewing its proposed changes to C-1 stream classifications, and could not make any updated spatial data available with regard to potential impacts.

COMMENT: Special rules should be established for the Highlands Area. Recognition should be made that the growth that has been seen in the Highlands region will not be seen at the same rate for the upcoming period. Public water and sewer are not readily available in the Highlands as they are in other areas of the State. There is also a marked lack of available land for large scale development projects. COAH rules should not be established in the Highlands region until there is a Memorandum of Understanding (MOU) between the two agencies, until the Highlands Preservation Area is considered in reducing the Third Round Projections and until there is a clear understanding by COAH, the Highlands Council, NJDEP and the municipalities where development can be accommodated. There is no way for a municipality to adequately plan for growth if the playing field keeps shifting.

RESPONSE: The Council notes that, as of the date of this rule adoption, the Highlands RMP is in draft form and has not been adopted. Upon adoption of the Highlands RMP, the Council will consider its impacts. COAH intends to work cooperatively with the Highlands Council to enter into a Memorandum of Understanding in the near future. Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, COAH's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The consultants are further updating this data to incorporate the estimated impacts of pending DEP Water Quality Management/Wastewater Management Plan Rules changes, using the same methodology as being employed to revise development capacity estimates across the rest of the State. These lower development capacity estimates will be used by COAH's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole. The 88 towns located within the Highlands region continue to have a constitutional obligation to provide for affordable housing, within constraints

imposed by the Highlands Act. The Council has updated its methodology to include data provided by the Highlands Council, thereby making the projections for the Highlands municipalities more realistic and attainable.

COMMENT: The new COAH rules generally do not reflect the obligation of municipality to comply with existing State laws and guidelines which pertain to the environment. Such regulations limit development potential and severely constrain the capability to provide necessary infrastructure to support housing, particularly sewage treatment and water supply. Compliance with environmental regulations and laws must be anticipated in the rules.

RESPONSE: The Council does not encourage the relaxing of environmental standards in order to build affordable housing units on environmentally critical areas. Sites designated to produce affordable housing must be available, approvable, developable and suitable pursuant to the criteria provided in N.J.A.C. 5:97-3.13. The site must be in compliance with the rules and regulations of all agencies with jurisdiction over the site.

COMMENT: There is no indication of how COAH is going to coordinate with the Highlands Master Plan. While the Highlands Master Plan calls for no new sewer systems unless it is a health issue, COAH mandates could not be met without introducing wastewater management plants to these environmentally challenged areas. There are no plans in place to provide public transportation to an already overburdened road system. The rural areas have not seen their byways increased from two-lane country roads but have experienced disproportionate growth. This growth comes not only from New Jersey, but from the more attractively priced housing in Pennsylvania. The Interstates are not the only recipients of congestion. The county and local roads are being used as regular travel routes to avoid the inevitable rush hour congestion and truck accidents. Municipalities in the Highlands area have the task of amending their Master Plans as well as implementing new COAH rules. Municipalities in the Highlands area need to determine if they will opt into the new Master Plan, when it's adopted. New COAH regulations are asking us to make housing plans concurrently without having all the details available. Until we know how our municipalities will be affected by the Highlands plan, it is difficult to plan for the kind of development that COAH mandates.

RESPONSE: Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, COAH's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The consultants are further updating this data to incorporate the estimated impacts of pending DEP Water Quality Management/Wastewater Management Plan Rule changes, using the same methodology as being employed to revise development capacity estimates across the rest of the state. These lower development capacity estimates will be used by COAH's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole. Proposed N.J.A.C. 5:97-3.16(a) encourages municipalities that have petitioned the Council for substantive certification to seek plan endorsement from the State Planning Commission; however, the Council is concerned that a requirement to obtain plan endorsement may postpone a municipality's substantive certification. Further, proposed N.J.A.C. 5:97-3.13(b)3 requires that sites within areas regulated by the Highlands Water Protection and Planning Council shall adhere to the land use policies delineated in the Highlands Water Protection and Planning Act. As of the date of this rule adoption, the Highlands RMP is in draft form and has not been adopted. Upon adoption of the Highlands RMP, the Council will consider its impacts. COAH intends to work cooperatively with the Highlands Council to enter into a Memorandum of Understanding in the near future. The 88 towns located within the Highlands region continue to have a constitutional obligation to provide for affordable housing, within constraints imposed by the Highlands Act. The Council has updated its methodology to include data provided by the Highlands Council, thereby making the projections for the Highlands municipalities more realistic and attainable.

N.J.A.C. 5:97-3.16(b)

COMMENT: In order to clarify the proposed rule at N.J.A.C. 5:94-3.16(b) and implement the requirement in the Highlands Act that COAH take into consideration the Regional Master Plan for all Highlands municipalities, it is recommended that this section be clarified and that the Regional Master Plan (RMP) be specifically incorporated by reference. A similar incorporation by reference of the RMP has been adopted in the rules at N.J.A.C. 7:38-1.1.

RESPONSE: The Council notes that, as of the date of this rule adoption, the Highlands RMP is in draft form and has not been adopted. Upon adoption of the Highlands RMP, the Council will consider its impacts. COAH intends to work cooperatively with the Highlands Council to enter into a Memorandum of Understanding in the near future.

COMMENT: The Council should more specifically identify when coordination with other State agencies, as mentioned at N.J.A.C. 5:97-3.16(b), will occur as recommended and develop a MOA or MOU with relevant State agencies that establishes a process for screening the suitability of potential COAH sites within their jurisdiction. Relevant State agencies should be listed. DEP should be listed explicitly.

RESPONSE: COAH would welcome the opportunity to enter into an updated memorandum of understanding with NJDEP. COAH anticipates entering into updated memoranda of understanding with the Pinelands Commission, the Highlands Council, the Meadowlands Commission, and the Office of Smart Growth in the near future, and will revise its rules in the near future to address affordable housing opportunities in the Meadowlands.

N.J.A.C. 5:97-4

COMMENT: This municipality received Substantive Certification under Round two with a 20-unit credit. All of the credits remain eligible under the proposed Round three rules. Therefore, the municipality will begin its Round three analysis with a 20-unit credit to be used towards its actual growth share requirement. Will the municipality be required to provide a realistic opportunity, that is, zoning, to provide for the total affordable units resulting from the growth share projections?

RESPONSE: If the Council determines that the municipality has 20 valid surplus credits for past housing activity that exceeds the prior round obligation, the credits may be brought forward to address the growth share obligation. The municipality's growth share obligation will thus be reduced by 20 units. As a result, the municipality must submit a realistic plan, which may include zoning, that addresses the affordable housing obligation that results from the growth share projections minus 20.

COMMENT: Only units constructed after 1999 are eligible for credit towards the growth share, which means there will be virtually no carryover of credits from prior rounds to the third round. This inequity should be corrected, and municipalities should be entitled to full credit for the units that they have provided for in their communities.

RESPONSE: The commenter is incorrect. The restriction prohibits rental bonuses against the growth share obligation for units built before June 6, 1999. The original unit may be eligible for credit against the growth share obligation and may be applied toward the 25 percent minimum rental requirement.

COMMENT: Bonus crediting should be reinstated for family rental units at least to the extent of the current adopted Round Three rules.

RESPONSE: Bonuses are still provided for family rental units pursuant to N.J.A.C. 5:97-3.5 for the prior round obligation and N.J.A.C. 5:97-3.6 for the growth share obligation.

COMMENT: The Fair Housing Act requires the Commissioner of Community Affairs to establish and keep a Register of Housing Projects (N.J.S.A. 52:27D-307.2), which must include all projects for which the Department of Community Affairs is providing assistance, or for which DCA has been solicited in furthering an application for assistance from another like agency or the United States government. Often there are affordable housing units created without municipal action or participation, and of which the municipality may not have knowledge. Municipalities should be able to receive COAH credit for affordable housing units that are not created through municipal action. COAH should review the NJ DCA Statewide Register of Housing Projects and grant credit to all host municipalities for all affordable housing units, regardless of whether or not there is municipal participation in or knowledge of the creation of the unit.

RESPONSE: The New Jersey Guide to Affordable Housing is a listing compiled by the Department of Community Affairs, Division of Codes and Standards, which lists all types of affordable housing by county. The housing units on the list have a variety of qualification requirements, including age-restricted housing and housing for the developmentally disabled. This list is available online at http://www.nj.gov/dca/codes/affdhousing/affdhsgguide/index2.shtml. However, at this time the Council cannot utilize the information as is because it does not provide all the information the Council needs to assess whether the units would be eligible for COAH credit pursuant to N.J.A.C. 5:97-4. The Council is currently coordinating with other State agencies on this issue and the suggestion provided by the commenter may be possible at a future date.

COMMENT: The Council should expand criteria for credits to enable municipalities to utilize past accomplishments to meet their current obligations, even though the funding regulations effective at the time may not exactly meet current standards. If a municipality has been providing affordable housing for a considerable amount of time credits should be provided for units created regardless of funding source (HOME, CDBG, RR, etc.), period of affordability, and/or definition of affirmative marketing. Each funding source had its own regulations at the time and none if any had a 20-year affordability period. Even when COAH was created in 1985 COAH only required a six to 10-year affordability period. It seems unfair to stipulate acceptance of a 20-year affordability period after the fact. In addition, RCA sending municipalities receive credit for units created with less than 20-year affordability periods. If a municipality had an affirmative marketing policy in existence and proof is available to show that it was followed, credits should be provided.

RESPONSE: Municipalities will generally be able to receive credit according to the Council's rules in place at the time the units were built or approved, as the commenter suggests. The commenter should note that the Council is not aware of any past policies that provided credit for units that only had six- to 10-year controls on affordability, with the exception of alternative living arrangements and accessory apartments with 10-year controls. However, the Council will honor whatever rules were in effect at the time with regard to controls on affordability. With regard to affirmative marketing, the Council will review the municipality's affirmative marketing policies in place and work cooperatively with the municipality to determine whether the units could be eligible for credit.

N.J.A.C. 5:97-4.1

COMMENT: The commenter supports this rule revision that clarifies the applicability of credits.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The rule appropriately allows and requires credits for previous housing activity to be applied to prior round obligations, including RDP as well as unmet need. The explicit stress on meeting the prior round unmet need is important to maintain a fair and 'level playing field'' among municipalities.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-4.1(a)

COMMENT: The rule stipulates that a second round substantive certification which incorporated a vacant land adjustment, requires that credits shall be applied to COAH's realistic development potential (RDP) for the community before credits can be applied to the unmet need or growth share. This effectively negates the outcome of the vacant land adjustment which found that there was not sufficient vacant land to accommodate the affordable housing obligation for the prior round. This rule is unfair in that it negates the vacant land adjustment process and will significantly curtail, or eliminate, any credits carried forward from the prior round to the third round.

RESPONSE: The commenter is incorrect in the applicability of this regulation. The rule does not negate a previously granted vacant land adjustment. It has always been the Council's past practice to apply credits against the

municipality's RDP. If a municipality received a vacant land adjustment as part of a prior round substantive certification that resulted in an RDP of zero units, any credits that existed would have been applied toward the unmet need at the time of substantive certification. Units created subsequent to substantive certification may be applied toward unmet need or the growth share obligation provided the units weren't a mechanism previously included in the certified plan to address unmet need.

COMMENT: This section places qualifications on receiving of credits for previous housing activity. The qualifiers appear to be designed to deny credits to municipalities for previous housing activity. Specifically, the credits will only be granted if the housing activity complies with the criteria in the proposed rules, and meets the applicable formulas set forth in N.J.A.C. 5:97-3. It is this writer's view that no credits or bonuses for previous housing activity should be denied, and crediting for previous housing activity should be fully recognized and observed by COAH. A further description of the intent of COAH in imposing qualifiers needs to be given.

RESPONSE: The rule will be amended in the near future to indicate that in the case of municipalities that received second round substantive certification or a judgment of compliance, the Council will honor the number of age-restricted credits, the credits addressing the rental requirement and RCA credits included in the previously certified plan or judgment of compliance if the mechanisms that were included in that certification or judgment still present a realistic opportunity pursuant to N.J.A.C. 5:97-6.5.

N.J.A.C. 5:97-4.1(b)

COMMENT: This section is too restrictive. It requires new construction to have received certificates of occupancy, and rehabilitation to have final inspections before credits will be allowed. Again, COAH needs to be more flexible. If units are under construction, but no certificate of occupancy has received, or if rehabilitation has been undertaken, but final inspections not complete, municipalities should not be denied credits for prior housing activity.

RESPONSE: The Council will provide credit to units that are still under construction and rehabilitation credit when rehabilitation is currently taking place.

N.J.A.C. 5:97-4.1(d)

COMMENT: In order to effectively monitor affordable housing units with statewide consistency, the commenter recommends that either COAH coordinate and provide this service, NJDCA provide this service more reliably, or that the counties provide this service as they already have employees with a similar skill set who monitor their own housing rehabilitation, CDBG and HOME programs. To require municipalities to coordinate and oversee their own units and hire their own consultants often results in units dropping through the cracks, being illegally sublet and controls not being renewed in a timely fashion. If units were advertised on a Statewide database and applications filed on-line, it would likely be cost-saving and would also make applying for the units easier and less confusing to the applicants.

RESPONSE: Municipalities may enter into a contract with an approved administrative agent to administer affordability controls. For example, municipalities may contract with the New Jersey Housing and Mortgage Finance Agency (NJHMFA) Housing Affordability Service (HAS) for the sale/re-sale and monitoring of their affordable units. However, municipalities are ultimately responsible for administrating the affordability controls on their affordable units and must adhere to COAH's rules on monitoring and the Uniform Housing Affordability Controls. The Council has recently instituted a training and certification program for municipal housing liaisons and administrative agents and has amended its rules to reflect these provisions (N.J.A.C. 5:96-20). Lastly, the State through HMFA has established the Housing Resource Center (http://www.njhousing.gov/) to advertise affordable units throughout the state.

N.J.A.C. 5:97-4.2

COMMENT: This section allows credit for units constructed between 1980 and 1986 only if it was governed by

affordability controls of 20 years or more. Municipalities that contain a large amount of affordable housing built prior to 1987 should be able to get credit for that housing, if it is functioning as affordable housing regardless of affordability controls. It is unfair that municipalities with a large amount of pre-existing affordable housing have to take on the new growth share numbers, resulting in the total percentage of affordable housing in the community being much higher than neighboring communities. This is of particular concern for our municipality, where redevelopment is being explored as a method for improving neighborhoods and increasing the property values.

RESPONSE: A municipality's affordable housing obligation is divided into two mandatory components: a rehabilitation share and a new construction share. They are separate obligations and the criteria for determining these obligations are distinctly different. See Appendix A and Appendix B for further information on the methodology for determining these obligations. The new construction share is divided into the prior round obligation and the growth share component. The Council's rules have never permitted rehabilitation activities to address a new construction obligation. Rehabilitation activities may only be used to address a municipal rehabilitation obligation. If a unit that is reconstructed meets the criteria for reconstruction as defined in N.J.A.C. 5:97-1.4, the unit may address the municipality's new construction obligation. Pursuant to N.J.A.C. 5:97-4.2(b), municipalities may still be eligible for credits without controls against the prior round obligation, which are essentially credits for affordable units that do not have affordability controls. The municipality must document the credits without controls with a survey certified by the occupants. Credits without controls are a form of prior cycle credits and must be currently occupied by a low- or moderate-income household and affordable to households earning 80 percent of median income.

COMMENT: N.J.A.C. 5:97-4.2 addresses the prior cycle credits. For those units that were created pursuant to a court-mandated special master and which have a control period of 25 years rather than 30 years and without any provision for extending controls, it is important that the rules expressly state that (1) if these units continue to remain affordable housing units to the end of the 25 control period, that the municipality will receive a prior cycle credit for this unit; and (2) that when COAH determines the total cumulative number of units required to obtain third round certification that these units (even if the controls will have expired during the third round period) will be counted.

RESPONSE: The Council will honor credits that were previously granted in a Judgment of Compliance. This will be reflected in a future rule amendment. Units would receive credit toward the growth share obligation provided they have controls on affordability in place through 2018 or the controls on affordability are extended in accordance with N.J.A.C. 5:80-26.1.

COMMENT: Prior Cycle Credits that are eligible COAH credits should be eligible to address a prior round obligation as well as a Growth Share obligation and there should be no distinction or additional requirements. Adding an additional requirement for Prior Cycle Credits is contrary to the Fair Housing Act that states municipal fair share is determined after crediting on a one-to-one basis each current unit of low and moderate income housing.

RESPONSE: Municipalities may still apply prior cycle credits toward the prior round obligation even though the controls have or will expire provided the controls ran the full required term. In addition, municipalities may receive credit toward the growth share obligation on a prior cycle or post-1986 credit if the controls are set to expire during the third round period and the affordability controls are extended, pursuant to the criteria listed in N.J.A.C. 5:97-6.14. The Council believes that its rule is consistent with the FHA.

COMMENT: An apartment complex built under the Federal Section 236 Program in 1973 does not qualify for credit under COAH's rules because they were built before 1980. The commenter does not understand the rationale for that because the Council is not worried about whether the buildings were constructed before or after 1980 for a market to affordable program or an accessory apartment program. The commenter feels it should be entitled to credit for those low- and moderate-income units that were created back in the 1970s that have been subsequently deed-restricted to remain affordable. If credit is granted, the municipality will be motivated to do whatever it can to preserve those affordable units, but if not, then the municipality has no incentive to see those units remain affordable.

RESPONSE: The need established in the Council's first round methodology was calculated based on the 1980 Census, which captured data on need that had been fulfilled prior to 1980. The Council has established a program providing credit for municipalities that extend controls on affordability for units that previously received credit in the first or second round. The Council does not believe that it is appropriate to further expand the program at this time. The program was upheld in the *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing,* 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied,* 192 *N.J.* 71 (2007), decision. However, a municipality may seek a waiver to permit crediting of units that would otherwise be lost to the affordable housing stock. The Council shall review waivers on a case-by-case basis.

COMMENT: The commenter supports the Council's change from the prior regulation to clarify the eligibility for prior round cycles and prior round credits as being applicable for units that are in existence and occupied.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-4.2(b)

COMMENT: COAH should clarify if it will require price stratification in order to receive credits for units constructed between 1980 and 1986 that are not controlled by a deed restriction (credits without controls). It is illogical to permit substantial credit for housing units that address only moderate income households earning approximately 80 percent of median income.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. The Council believes that rule is consistent with the FHA at N.J.S.A. 52:27D-307c(1).

COMMENT: Are municipalities entitled to full credit for units constructed between April 1, 1980 and December 15, 1986 regardless of whether the units are age-restricted?

RESPONSE: Yes, municipalities would be entitled to full credit. The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. As of 1986, the Council has had standards for providing credit for low and moderate income housing units. The Fair Housing Act requires the Council to provide credit for housing activity that preceded 1986. It seems reasonable to the Council to recognize legitimate low and moderate income housing activity that does not adhere fully to rules that did not exist at the time this housing activity was initiated.

N.J.A.C. 5:97-4.2(c)

COMMENT: Does the requirement on controls on affordability through 2018 for units addressing the growth share obligation apply to the units described in N.J.A.C. 5:97-4.2(b)?

RESPONSE: Yes. However, credits without controls continue to be eligible for credit against a prior round obligation pursuant to N.J.A.C. 5:97-4.2(b).

COMMENT: This requirement should be applied to units being proposed for the first time to meet a prior round obligation. It is arbitrary and rewards municipalities that have been non-compliant in the past to not require units to continue to be affordable through 2018 just because they are technically meeting a prior round obligation.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93 and the Council does not believe this change is warranted. To do as the commenter suggests would unfairly burden municipalities who complied with the rules that were in place at the time. The Council will continue to count credits for units that had been the subject of affordability controls that were required by N.J.A.C. 5:92-12.1 and 5:93-9.2 provided the controls ran the full required term.

COMMENT: The Fair Housing Act and COAH need to expressly state that municipalities have the right to extend

affordable housing controls on all COAH certified affordable housing units. N.J.A.C. 5:97-4.2(c) states that "[i]f the credit is to be applied toward the growth share obligation, the controls on affordability shall be in place through December 31, 2018 or, if expiring during the third round period, shall be renewed in conformance with N.J.A.C. 5:94-9 and UHAC." There exists a substantial number of affordable housing units in this State that were created prior to the original COAH regulations being adopted but were subsequently certified by COAH. The deeds and master deeds governing these units do not provide for extending controls, and many do not provide for 95/5 repurchase by municipalities. In all likelihood, these controls cannot be extended without costly, protracted litigation, as owners have an expectation that these units will convert to market units upon expiration of the current controls and that the owners will reap the profits from market sales.

RESPONSE: Municipalities may extend affordable housing controls on COAH units. Administrative agents have been preserving these units by either converting them to 95/5 or by extending controls by placing a new deed restriction on the units when the units are sold during the initial restriction period. This strategy may be employed by all municipalities to help preserve their stock of affordable housing. If the units are part of a homeowner's association and are paying reduced association fees, municipalities should negotiate with the association to allow the fees to increase to 100 percent if the municipality wishes to extend the controls on the units.

N.J.A.C. 5:97-4.3

COMMENT: There may be some potential for developing affordable housing on farms or receiving credit for units on farms already rated "affordable" to help a municipality meet its obligation. COAH should investigate the Vermont housing and land conservation program that has developed thousands of rural affordable units at the same time that farmland is preserved.

RESPONSE: Affirmative marketing is a basic requirement for all COAH units that are intended to address a municipality's growth share obligation. The Supreme Court, in its *Warren* decision, has generally invalidated residential preference for units that meet a regional need and provided very specific guidelines on any future residential preference. Therefore, the Council has determined that such a reservation of affordable units is inconsistent with the direction provided by the Supreme Court.

COMMENT: Affordable housing is an issue that will always need to be addressed. Therefore, the commenter recommends that the Council initiate a process to eliminate the expirations of affordability controls on the subject units and make the restrictions perpetual.

RESPONSE: N.J.A.C. 5:97-4.3(a)3 notes that COAH affordable units constructed between October 1, 2001 and December 20, 2004 are required to have affordability controls of not less than 30 years except in municipalities eligible for the Municipal Aid Program where the requirement may be not less than 10 years. The Uniform Housing Affordability Controls, as amended in 2004, allow the 10-year restriction in workforce housing Census tracts. UHAC states that the affordable restriction may be removed by the municipality by positive action of the governing body and a plan to replace the lost units. The Council believes that such flexibility is necessary as the nature and best use of an area may change over time and the municipality must be allowed to meet the changing needs of the whole community while also meeting its affordable housing obligation.

COMMENT: Credits should be received for each "bed" instead of "bedrooms" created in supportive, special needs and/or assisted living housing (facility licenses issued by the State are based on number of beds, not bedrooms). This provision will then be consistent with N.J.A.C. 5:97-6.10(b)1.

RESPONSE: N.J.A.C. 5:97-6.10(b)1 states that the unit of credit for group homes, residential health care facilities, and shared living housing is the bedroom; therefore, the two regulations are consistent with each other. The bedroom is the equivalent of a housing unit with regard to crediting special needs housing. Permanent supportive housing is credited by the unit because these facilities usually serve households. The unit of credit for an assisted living facility is

the apartment, except a two-bedroom apartment may be eligible for two units of credits if it is restricted to two unrelated individuals. Those who live in supportive, special needs and/or assisted living housing often live in accommodations that are not for an individual person in a single room. Some may offer dormitory-style accommodations; some have multiple occupants per room. To account for this, an average living relationship of two occupants per room was used. In providing accommodations for single occupants, two per room is not uncommon. The New Jersey Division of Developmental Disabilities indicates that group homes could have one or two persons per room. The Council's rule that one bedroom housing an average of two people counts as one affordable unit is both an adequate compromise and a realistic predictor of the accommodations likely to be built.

COMMENT: Does this section require that all affordable units developed under first and second round criteria must redemonstrate that they meet these criteria? Or is it intended to apply only to units developed during that period but not included in prior round plans and reports?

RESPONSE: It is not the intent of the Council to require a municipality that received credit for built units as part of a prior round substantive certification to demonstrate again that the built affordable units meet the criteria in this subchapter.

N.J.A.C. 5:97-4.3(a)3

COMMENT: As a general rule, qualification for crediting should be granted if a unit or project met COAH's rules at the time it was built or, in the case of a municipally-sponsored or non-profit project, at the time it was approved as part of the Housing Element and Fair Share Plan by COAH or the Court or at the time the application was made for funding (which is when the pro forma would have been created), including the application of "Appendix E" and an exemption for LIHTC projects from UHAC rules. Many towns proceeded in good faith and COAH should give credit even where variations from the rules ultimately adopted exist. Many towns were not in control of the timing of funding cycles or the availability of timely funding for their projects.

RESPONSE: Municipalities will receive credit according to the criteria in place at the time. N.J.A.C. 5:97-4 represents the compilation of crediting criteria from N.J.A.C. 5:93 and N.J.A.C. 5:94; therefore, the rule covers the commenter's concerns.

N.J.A.C. 5:97-4.3(a)4

COMMENT: The rule references in this subsection on affordability criteria do not appear to be correct. For instance, N.J.A.C. 5:97-6.5 is the rule section on the status of sites addressing the prior round.

RESPONSE: The Council will amend the rule in the near future to delete the reference to N.J.A.C. 5:97-6.5.

N.J.A.C. 5:97-4.3(c)

COMMENT: There should be a process established in the rules that the name and address of group homes will be submitted to COAH by municipalities for a prompt assessment of their crediting, and that this can occur during the planning process, prior to the filing of plans. The commenter thinks COAH is cognizant of the problems municipalities have had with respect to obtaining correct applicable information from either the group home providers or the State agencies that regulate them; however, the commenter does not think the problem has been fully resolved. There should also be flexibility with respect to group homes that were purchased or constructed utilizing donations or similar private funding instead of State or Federal funding. Licensed facilities should be allowed to receive credit, and if they close or are sold before the 30-year time period, then the credits can be repealed. Group homes generally represent such a small percentage of a municipality's overall plan and serve such a tremendous public purpose that additional flexibility is warranted to encourage municipalities to welcome these uses.

RESPONSE: While the commenter's suggestion is appreciated, the Council could not accommodate this request, given the Court's deadline of June 2, 2008 for adopting revised third round rules. However, the Council is currently consulting with DHS in an attempt to streamline the process. With regard to the commenter's suggestion on flexibility, the Council will honor its past practice in recognizing 20-year capital funding agreements for group homes by DDD within DHS as meeting the intent of the 30-year affordability control period in order to receive rental bonuses. In addition, the Council will amend N.J.A.C. 5:97-6.10 in the near future to reflect this as an option for new group homes.

COMMENT: The standards for special needs housing, specifically for length of controls, should be uniform from December 15, 1986 forward.

RESPONSE: N.J.A.C. 5:97-4.3(c) lists the requirements for credits for existing affordable housing units, including special needs housing. This criteria was established previously in N.J.A.C. 5:93 and N.J.A.C. 5:94 and remains unchanged.

N.J.A.C. 5:97-4.3(c)1i

COMMENT: The commenter requests a clarification to COAH's proposed rule at N.J.A.C. 5:97-4.3(c)1i. Pursuant to the New Jersey Reorganization Plan of 2005, residential health care facilities are now licensed and regulated by the New Jersey Department of Community Affairs, unless the facility is located with, and operated by, a licensed health care facility, in which case DHSS will continue supervision.

RESPONSE: The Council will amend the rule in the near future to accurately reflect the licensing of residential health care facilities.

N.J.A.C. 5:97-4.3(c)1ii

COMMENT: COAH's rule should be revised to reflect COAH's prior acceptance of the renewable 20-year capital funding agreements for group homes by DDD within DHS as meeting the intent of the 30-year affordability control period and thus eligible for a prior round rental bonus. As proposed, COAH would only be honoring the 20-year renewable contract for group homes established after December 20, 2004 per N.J.A.C. 5:97-4.3(c)2i.

RESPONSE: The Council has honored 20-year capital funding agreements for group homes by DDD within DHS as eligible for rental bonuses and will contine to do so.

N.J.A.C. 5:97-4.3(d)

COMMENT: The commenter applauds COAH for recognizing that an "assisted living residence" is an important option for frail elderly residents in need of supportive and special needs housing in New Jersey and believes it is appropriate for a municipality to claim a credit for each apartment located in these settings. However, as mentioned previously, since other similar options are available the commenter recommends that a municipality also be able to claim a credit for each "comprehensive personal care home" and "residential health care facility" unit throughout the State.

RESPONSE: Municipalities are eligible to receive credit for residential health care facilities and comprehensive personal care homes provided the facility is regulated by the New Jersey Department of Health and Senior Servicesor DCA, as applicable, and has the appropriate controls on affordability in place.

N.J.A.C. 5:97-4.4

COMMENT: RCA credits should be revoked if the project is not successfully executed in the receiving municipality.

RESPONSE: To do as the commenter suggests would unfairly burden the sending municipalities who complied with the rules in place at the time of the transfer for matters not within their jurisdiction. However, the Council requires monitoring from the receiving municipality and would require the receiving municipality to submit an amended project plan to replace any units not successfully completed.

N.J.A.C. 5:97-4.5

COMMENT: The commenter greatly encourages credits for the rehabilitation of older units. Rehabilitation and filtering provide a meaningful opportunity to provide affordable units outside of growth share while maintaining and improving existing structures which benefits the environment by saving unnecessary building materials and recycling costs. Rehabilitation and redevelopment should be encouraged at all times.

RESPONSE: The Council appreciates the commenter's support. The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93 and there are no proposed changes to how municipalities can address their rehabilitation obligation. A municipality's affordable housing obligation is divided into two mandatory components: a rehabilitation share and a new construction share. The rehabilitation component of affordable housing need is recalculated with each Decennial Census. Rehabilitation activities may only be used to address a municipal rehabilitation obligation. If a unit is rehabilitated pursuant to N.J.A.C. 5:97-6.2, the unit may address the municipality's rehabilitation obligation. A municipality may receive rehabilitation credit in the third round for rehabilitation of low and moderate income deficient housing units performed subsequent to April 1, 2000. Additionally, if a unit that is reconstructed meets the criteria for reconstruction as defined in N.J.A.C. 5:97-1.4, the unit may address the municipality's new construction obligation. However, the Council encourages the reuse and redevelopment of buildings and land. The rules contain a new section on redevelopment has been added to capture the unique circumstances surrounding redevelopment that occurs specifically under the auspices of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. Affordable units in a redevelopment area that are created pursuant to N.J.A.C. 5:97-6.6 may address the municipality's new construction obligation.

COMMENT: In its proposed rules, COAH has recognized that a majority of municipal-level housing rehabilitation is performed by Counties through their CDBG and HOME funding programs. Therefore, all rules established by COAH that are inconsistent with CDBG and HOME program rules should be applicable only to municipally-run programs (which are required to include rental unit rehabilitations).

RESPONSE: Units rehabilitated by county programs are generally eligible for credit against the municipality's rehabilitation obligation provided the rehabilitation was performed subsequent to April 1, 2000. The Council strives to work cooperatively with the counties to resolve any discrepancies between the Council's rules and county program requirements. The Council is working with the counties that do not have rental rehabilitation as part of their rehabilitation programs to help expand the county programs. Some counties do provide renter-occupied and owner-occupied

N.J.A.C. 5:97-4.5(b)1

COMMENT: The required minimum dollar amount does not have a basis in the U.S. Census Bureau data on which the Rehabilitation Share numbers are based. The Census data merely reports the number of units that have deficient kitchens and plumbing. If it costs less than $ 8,000 or costs less than $ 10,000 to cure a plumbing deficiency or to install a usable kitchen, then the units should still receive credit for being rehabilitated. To do otherwise does not encourage efficient spending and limits the number of units that benefit from a housing rehabilitation program.

RESPONSE: The minimum amounts to be spent to receive COAH credit for a rehabilitated unit were not based on the Census. The number of units deemed to be deficient and in need of rehabilitation were based on the 2000 Census. The minimum amount to be expended for a rehabilitation unit was based generally on data received from programs that provide funding to rehabilitation programs. The commenter should note, however, that the $ 10,000 represents a

minimum average. Municipalities may spend more on some units and less on others provided the minimum average requirement is met.

N.J.A.C. 5:97-4.5(e)

COMMENT: As proposed, the rules only provide for credits for rehabilitation to be credited against the rehabilitation share. This is arbitrary and unduly rigid. In a place such as Newark, where deficient housing is abundant, every rehabilitated unit is an opportunity for a resident to live in suitable housing and there should be an unlimited opportunity for the municipality to achieve credits for the same.

RESPONSE: A municipality's affordable housing obligation is divided into two mandatory components: a rehabilitation share and a new construction share. They are separate obligations and the criteria for determining these obligations are distinctly different. See Appendix A and Appendix B for further information on the methodology for determining these obligations. The new construction share is divided into the prior round obligation and the growth share component. The Council's rules have never permitted rehabilitation activities to address a new construction obligation. Rehabilitation activities may only be used to address a municipal rehabilitation obligation. If a unit that is reconstructed meets the criteria for reconstruction as defined in N.J.A.C. 5:97-1.4, the unit may address the municipality's new construction obligation.

N.J.A.C. 5:97-5

COMMENT: May a municipality seek a vacant land adjustment for a growth share obligation if there is insufficient vacant land available to provide affordable housing, assuming the only "growth" is the demolition and rebuilding of individual residential units? If not, explain how it is expected such a municipality would comply with the obligation created.

RESPONSE: If the municipality is lacking vacant land, then it may apply for a growth projection adjustment. However, the municipality should be aware that demolitions may not be subtracted from the residential growth share obligation. Therefore, the rebuilding of individual residential units may accrue an actual growth share obligation and the municipality should propose a mechanism for capturing this need, such as a development fees on the increased accessed value of the house and use the development fees to implement a non-zoning approach to addressing the obligation, such as an accessory apartment program or market to affordable program.

COMMENT: There is no provision in the rules that would allow for adjustments in the growth share obligation based on new rules or regulations that may be promulgated over the next 10 years that may further limit the realistic growth potential within a municipality. The rules should be amended to allow for adjustment in the municipal growth share obligation based on further consideration of growth projections that are based not only of available vacant and developable land, but also in due consideration of other factors which limit development potential and are allowed for under the Fair Housing Act, such as infrastructure capacity, environmental and historic preservation factors, or other considerations that may be required under other State or Federal law.

RESPONSE: This has not been the prior practice of the Council. Once an adjustment is granted based on the factors noted above, the Council does not believe it appropriate for the municipality to seek further adjustments as the municipal fair share plan has been certified by the Council as creating a realistic opportunity for the provision of affordable housing for the period of substantive certification. The municipality is responsible for creating a realistic opportunity to address the affordable housing obligation resulting from the adjusted household and employment projections. However, to address the commenter's concern, the Council has reinstated the durational adjustment based on lack of infrastructure and the 1,000-unit cap adjustment that were also in place for the second round obligation.

COMMENT: Comment on Summary: As stated "The new rules permit the Council to review the municipality's mechanisms to address unmet need and require the municipality to amend or add additional mechanisms." This is an

inappropriate rule that will only open the door for "builder's remedy" lawsuits. If a town cannot meet its required COAH numbers, the Council should only be able to recommend additional mechanisms. As stated "The new rules also include a provision that allows a municipality to seek an adjustment to the household and employment projections provided in Appendix A, based on an analysis of existing land capacity." With the flawed data and science of Appendix A, the Council can expect an overwhelming number of municipal petitions, especially from those towns in the Highlands that are in water deficit areas where the Highlands Council has determined there is insufficient capacity for additional growth. Will there be adequate staff to handle this influx of petitions for adjustments? How long will the Council have to grant the adjustments? Will there be legal protections from meeting the mandated numbers while these adjustments are in review? These questions must be addressed in the proposed rules considering the inadequacies and "ground-truthing" that must occur to the Analysis of Vacant Land.

RESPONSE: The Council requires meaningful plans for unmet need. Therefore, in its third round petition, a municipality that was previously granted a vacant land adjustment has the opportunity to review the mechanisms it proposed previously to address its unmet need. Opportunities to capture affordable housing may have developed since the municipality's Housing Element and Fair Share Plan was certified. The Council has the responsibility to ensure that the municipality's overall Fair Share Plan provides a realistic opportunity for affordable housing. The Council is mindful of its duties and responsibilities under the proposed rules and the FHA, and to that end the Council is in the process of expanding its full-time staff to help review and process petitions for substantive certification and conduct ongoing monitoring expeditiously. The municipality is within the Council's jurisdiction once it files its Housing Element and Fair Share Plan pursuant to N.J.A.C. 5:96-1.2.

COMMENT: Which criteria would be used by the Council when it reserves the right to include additional vacant and non-vacant sites that were excluded by the municipality? Without clear criteria, this provision may result in decisions that are arbitrary and capricious. This section could be used as an opportunity for COAH to encourage/require redevelopment or infill before greenfield development.

RESPONSE: This depends on the specific nature of the property, as well as many other factors, and therefore must be reviewed on a case-by-case basis. However, N.J.A.C. 5:97-5.2(c) provides some examples of likely sites for reuse or redevelopment that may be included in the vacant land inventory that will contribute to the calculation of the RDP. These include sites that are devoted to a specific use which involves relatively low-density development which could create an opportunity for affordable housing if inclusionary zoning was in place. Such sites include, but are not limited to: golf courses not owned by its members; farms in SDRP Planning Areas 1, 2 and 3; driving ranges; nurseries; and nonconforming uses.

COMMENT: The DEP strongly emphasizes that the Council should rely on DEP as the authorized State agency to make determinations about the potential for water and sewer service when a municipality requests a durational adjustment pursuant to N.J.A.C. 5:97-5.4(f).

RESPONSE: The Council appreciates DEP's assistance and support.

COMMENT: Our municipality has a sizable, industrial site that is approximately 50 percent developed. Under our approved vacant land adjustment, this site was exempt. The new rules state that the unused portion of the site can be considered developable for affordable housing, yet it is not a vacant property and the Borough has no authority or desire to impose residential units on an industrial site. The environmental and planning conflicts that would result from such a land use proposal are unreasonable. This provision is untenable.

RESPONSE: From the limited information provided, the Council does not believe that the site would be included in the vacant land inventory for a growth projection adjustment. The commenter is referred to N.J.A.C. 5:97-5.6(c).

COMMENT: The DEP wonders if the Council recognizes and intends to utilize an approved WMP, which is the only document that can demonstrate the test established at N.J.A.C. 5:97-5.4(e)? If not, how would the Council

determine whether a municipality has insufficient water and/or sewer to support inclusionary development?

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. The Council believes the rule is clear and that a clarification is not necessary. The Council is aware that it must utilize Wastewater Management Plans in order to determine this.

COMMENT: Vacant land adjustments should never be allowed. Redevelopment of existing sites, parking lots, commercial blocks, other source of high-density development in existing places could allow every community to produce more apartments--more housing, accessory apartments and other alternatives could be used. There's no reason to look for vacant land. In fact, one could argue that any community that adopted at any point large lot zoning should have no way of claiming that there's a vacant land problem. There's nothing more blighted than single-family homes on large lots, two or three acres, when in fact a lot of affordable housing could be built there.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. The Fair Housing Act requires the Council to adjust municipal housing obligations if vacant and developable land is not available in the municipality (N.J.S.A. 52:27D-307(c)(2)). The municipality is responsible for demonstrating to the Council that the municipal response to its housing obligation is limited by the lack of land capacity. The Council performs a thorough analysis of vacant land, looking for sites that are devoted to a specific use which involves relatively low-density development which could create an opportunity for affordable housing if inclusionary zoning was in place, and any areas in the municipality that may develop or redevelop in order to determine the municipality's realistic development potential (RDP). The vacant land adjustment, or unmet need, is the difference between the prior round affordable housing obligation and the RDP. Municipalities must provide a response to the unmet need in accordance with N.J.A.C. 5:97-5.3. The Council does, in fact, require meaningful plans for unmet need. Pursuant to N.J.A.C. 5:97-5.3, all components designed to address unmet need as part of a municipality's prior round certification or judgment of compliance must continue in full force and any affordable housing units created will be credited toward unmet need until such time as the municipality has provided for its entire unmet need. Furthermore, the Council intends to conduct a thorough review of vacant land adjustments for all municipalities that did not implement all of the terms of the substantive certification or judgment of compliance.

COMMENT: Is it possible to have a mechanism put in place that would easily modify the growth allocation when land is set aside for conservation or open space?

RESPONSE: In Task 1, Analysis of Vacant Land in New Jersey and its Capacity to Support Future Growth, public and private open space and parks and preserved farmland were removed/subtracted from the land area of New Jersey to obtain vacant lands available for future development. In addition, if a municipality is seeking a vacant land or growth projection adjustment, it may remove active recreational lands and conservation, parklands and open space (passive recreation) lands from its vacant land inventory provided the lands are dedicated for that purpose pursuant to N.J.A.C. 5:97-5.2(d)6 and 7.

COMMENT: The DEP believes that the term "non-residential lands," as used in N.J.A.C. 5:97-5.6(e), is based upon the concept of zoning and, therefore, should be evaluated based upon the zoning. Lands zoned for agriculture as a primary use should not be used to attribute a job growth at a ratio of 45 jobs per acre since these projected employment opportunities simply do not exist in agricultural zones, unless the intensive processing of high value agricultural products are also permitted in these zones.

RESPONSE: The Council will amend its rule in the near future to state that the Council will utilize the municipality's zoning to determine whether to assign the residential or non-residential density to each site remaining in the vacant land inventory. In addition, the rules on the growth projection adjustment will be amended to provide different minimum units and jobs per acre based on planning areas, centers, sewer service areas and areas outside of sewer service areas. In areas outside of sewer service areas, the rules will reflect density based on septic standards consistent with DEP's new nitrate dilution standards.

COMMENT: Our municipality was granted a vacant land adjustment during Round two certification. Our previous housing plan incorporated inclusionary zoning. Under the previous rules, we provided a reasonable opportunity for those units to be built and that zoning/opportunity remains in place today. Under the new rules, we could lose our vacant land adjustment because the landowners whose properties are zoned for inclusionary zoning have elected not to develop their properties yet. This means our Round two obligation will go from two units to 17, even though the Borough continues to be built out with no vacant land on which to build. We cannot force landowners to build on their property and yet the new rules are poised to punish the Borough for not doing so. This seems patently unjust and fundamentally unfair.

RESPONSE: From the limited information provided, the Council does not believe that the municipality would lose its vacant land adjustment. The commenter would need to provide more specific information to the Council.

COMMENT: The Council's rules require a municipality to identify nonconforming uses on the grounds that those might be sites that would ultimately be redeveloped for conforming uses or affordable housing. The commenter's experience is that nonconforming uses, although the intent is that they wither away and die, never do. What ends up happening is they become more firmly entrenched because there's no place else to put them. This is not going to provide affordable housing opportunities.

RESPONSE: The Council appreciates the commenter's concern. Pursuant to N.J.A.C. 5:97-5.2(c)4, municipalities requesting a vacant land adjustment are required to submit sites that are nonconforming uses to evaluate whether the site(s) could create an opportunity for affordable housing if inclusionary zoning was in place. The Council will evaluate the site, along with all sites in the vacant land inventory, on a case-by-case basis in conformance with its rules in N.J.AC. 5:97-5. In the assignment of an RDP, the Council recognizes that some sites are more realistic and/or appropriate than others for the location of inclusionary development. Therefore, if the nonconforming use is not a realistic location for affordable housing, the Council will not assign an RDP to that site.

COMMENT: COAH has overstepped its mandate or expanded its mandate beyond from where it should. If a municipality seeks the household and employment growth projection adjustment and then is successful and gets the number reduced by 10 percent or more for the rules, COAH then has extraordinary zoning authority over that municipality. The proposed rules give COAH the authority to determine what the appropriate densities are going to be, whether the land should be zoned for residential or non-residential. The presumptive density of six units/acre drastically will alter the established pattern of development in the community. It even gives COAH the opportunity to reach out to landowners and see if they're interested in participating. Why would any municipality take you up on that offer? If they're successful in getting their number reduced, they've now ceded control to COAH over the zoning and their municipality, at least in regards to certain areas. In addition, the language mandates that all unconstrained lands that are not already developed are nonetheless to be deemed suitable for either residential or non-residential development. This sets the stage for "forced growth," as arbitrary estimates of future growth are played out on a landscape where the capacity to absorb growth has been overestimated. The basis for these assessments has completely disregarded and makes no attempt to be consistent with any adopted local, regional or state policies, and flies in the face of the adopted SDRP.

RESPONSE: The Council will amend its rule in the near future to state that the Council will utilize the municipality's zoning to determine whether to assign the residential or non-residential density to each site remaining in the vacant land inventory. However, the Council does not dictate how a municipality shall zone a site when a growth projection adjustment is granted. The minimum units and jobs per acre is a minimum of what that land could develop if zoned for that purpose at that density. The adjusted household and employment growth is then converted to a growth share obligation using the ratios set forth in N.J.A.C. 5:97-2. This process is similar to a vacant land adjustment, where a minimum units per acre is assigned to vacant land to determine the realistic development potential (RDP) of the municipality. However, the municipality is not required to zone these sites for inclusionary development and may address its RDP or adjusted growth share obligation using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6. Like the vacant land adjustment process, the Council believes that uniform minimum dwelling units

and jobs per acre is a reasonable approach. The growth projection adjustment process was intentionally designed to create predictability for all parties, as with the vacant land adjustment. It is important to note that the revised growth share approach relies in part on independent household and employment growth projections, which each municipality will utilize in its long range planning for affordable housing. Municipalities are required to construct or otherwise provide affordable housing in proportion with actual residential and non-residential development. In addition, Council's rules provide flexibility in addressing the affordable housing obligation by providing an option for municipalities to phase certain components of its plan based on feasibility of the proposed mechanisms. In this case, a detailed implementation schedule is required, which includes deadlines for submission of documentation to the Council.

COMMENT: The Council's projections are an unrealistic development scenario for a community that's fairly well built out. We hope that any type of appeal or vacant land analysis that can be done to remedy this situation will be a concise document that will be reviewed expeditiously as possible so the projections can be modified as necessary.

RESPONSE: The rules include a provision that allows a municipality to seek an adjustment to the household and employment projections provided in Appendix F, based on an analysis of existing land capacity. See N.J.A.C. 5:97-5.6.

COMMENT: There appears to be a conflict between proposed N.J.A.C. 5:97-5.1(c), which allows a vacant land adjustment to remain in effect, and N.J.A.C. 5:97-5.3(b), which provides there must be a new review. Please clarify the apparent conflict. It is the commenter's view that a municipality that has received a vacant land adjustment should not be required to repeatedly justify the adjustment.

RESPONSE: The review indicated in N.J.A.C. 5:97-5.3(b) is for the mechanisms used to address unmet need. If a municipality was previously granted a vacant land adjustment as part of a prior round obligation, the Council will not reevaluate the previously granted vacant land adjustment unless the municipality failed to implement the terms of the substantive certification or judgment of compliance. However, during the Council's review of the municipality's petition for substantive certification, the Council will review the municipality's mechanisms to address unmet need and may require the municipality to amend or add additional mechanisms in accordance with N.J.A.C. 5:97-5.3(b).

COMMENT: Vacant land capacity estimates used by the Council assume that growth will occur at greater densities than what is currently permitted in East Amwell Township. If all farmland and open space preservation was removed from consideration, in our case, 40 percent of the total available land, then our community's high projected growth share is deemed to be flawed. The Sourland Mountain District, which is largely forested, environmentally sensitive and contains soils that are unsuitable for septic system installation, should have also been removed from consideration.

RESPONSE: Although COAH's consultants used the DEP 2002 Land Use/Land Cover data, it used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP) and the Highlands Council. This included data on farmland preservation and purchases of open space by State, county, municipal and non-profit organizations made available to the Office of Smart Growth through the 2007. COAH's consultants have been working with NJDEP to incorporate additional information with regard to increasing the size of certain stream buffers and refining where development may be permitted within floodplain areas, both of which are regulated by the recently adopted Flood Hazard Control Act. In addition, they are updating the vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rule changes. These revisions will reduce growth potential in areas such as East Amwell.

COMMENT: Vacant land adjustments and household and employment growth projection adjustments both relate to the amount of vacant land in a municipality, but it is not clear from the regulations how the two types of adjustments are different and similar. Please provide a clarification regarding how they are similar and different.

RESPONSE: The process for a vacant land adjustment and growth projection adjustment are similar although not

identical. The concept of an RDP in a vacant land adjustment is that these are developable sites that could "potentially develop" if inclusionary zoning were in place. With the growth projection adjustment, the Council is looking at the developable sites in relation to all growth. The market rate growth is therefore adding to the municipality's growth share obligation. However, with both adjustments, the municipality is not required to zone these sites for inclusionary development and may address its RDP or adjusted growth share obligation using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6.

COMMENT: COAH should not confine the 1,000 unit cap limitation to the prior cycle obligation.

RESPONSE: The rule will be amended in the near future to include a 1,000-unit cap of the growth share projection obligation consistent with the Fair Housing Act, N.J.S.A. 52:27D-301.

N.J.A.C. 5:97-5.1

COMMENT: When land is a scarce resource and a municipality seeks a vacant land adjustment for the 1987-1999 housing obligation, the rule proposal requires credits to be subtracted from the unmet need prior to the realistic development potential. They also apply COAH's 25 percent cap to the unmet need. These rules are consistent with the original intent of N.J.A.C. 5:93-4.1 and 4.2. COAH should require municipalities that have already received vacant land adjustments to amend their plans based on the clear language of these rule proposals.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. To do otherwise would increase the obligation of a municipality that was certified previously. The Council believes that changing the rule now would cause an undue burden to these municipalities who relied on the these credits being applied to their RDP as part of their prior round substantive certification.

COMMENT: If a vacant land adjustment was granted as part of a first round certification it should continue to be valid provided the municipality has implemented all of the terms of the substantive certification or judgment of compliance, regardless of whether they petitioned the Council for second round substantive certification or not. The municipality should not have to perform another vacant land adjustment application merely because it did not apply for second round substantive certification. The criteria for granting a vacant land adjustment is independent of the issue of applying for second round substantive certification and should not be tied to second round substantive certification.

RESPONSE: The purpose of this rule is to prevent abuse of the vacant land adjustment procedure. This rule provides flexibility to the Council to possibly evaluate a municipality's previously granted first round vacant land adjustment if the municipality never petitioned for second round substantive certification or judgment of compliance. There are many circumstances where a municipality's previously granted vacant land adjustment would not be valid anymore and may need to be reevaluated by the Council, such as if the municipality granted a large number of building permits without affordable housing during the period that it was not under the Council's jurisdiction.

COMMENT: The proposed rules should not prohibit a town from seeking an adjustment in prospective need as allowed under the Fair Housing Act. The rules should be amended to allow for adjustment in the municipal growth share obligation based on further consideration of growth projections that are based not only of available vacant and developable land, but also in due consideration of other factors which limit development potential and are allowed for under the Fair Housing Act, such as, infrastructure capacity, environmental and historic preservation factors, or other considerations that may be required under other state or federal law.

RESPONSE: Pursuant to N.J.A.C. 5:97-5.2(d)4 and 5, sites or portions of sites may be excluded from the vacant land inventory if they are environmentally sensitive or historic and architecturally important sites. The Council's rules and projections will be amended in the near future to take into account the adopted DEP Water Quality Management Planning Rules (N.J.A.C. 7:15). In addition, the rules on the growth projection adjustment will be amended to provide different minimum units and jobs per acre based on planning areas, centers, sewer service areas and areas outside of

sewer service areas. In areas outside of sewer service areas, the rules will reflect density based on septic standards consistent with DEP's new nitrate dilution standards. Lastly, the rules will be amended to allow a durational adjustment for sites addressing the growth share obligation.

COMMENT: These provisions are highly confusing and require clarification in order to be consistent with N.J.S.A. 52:27D-307(c)(2), which requires that the COAH regulations address adjustment of prospective municipal affordable housing obligations based on available vacant and developable land. The proposed regulations are contrary to this statutory mandate, since they expressly allow vacant land adjustments only for prior round obligations and do not refer to any adjustment to prospective growth share obligations.

RESPONSE: The Council does not believe that any clarification is necessary. The Council welcomes any specific recommendations pertaining to clarification of these sections. N.J.A.C. 5:97-5.6 provides the procedures for a growth projection adjustment.

N.J.A.C. 5:97-5.1(a)

COMMENT: Does N.J.A.C. 5:94-5.1(a) mean that despite the availability of new information, such as a newly updated wastewater management plan, municipalities are unable to readjust prior round obligations if they have requested a vacant land adjustment in the past?

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. The Council has not and will not revisit previously granted vacant land adjustments, unless the municipality failed to implement the terms of the substantive certification or judgment of compliance.

N.J.A.C. 5:97-5.1(b)

COMMENT: The rule appropriately requires municipalities seeking an initial vacant land adjustment to apply eligible credits first to addressing the unmet need. This supports the important point that the unmet need is a continuing municipal obligation that does not disappear and must be addressed.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: COAH has granted vacant land adjustments to many municipalities often resulting in substantial unmet needs. If such a municipality must first address its substantial unmet need before it can begin to address the RDP, then it can never, as a practical matter, satisfy the RDP, and there is no meaning to COAH's having granted a vacant land adjustment. Once an RDP has been established for a municipality receiving a vacant land adjustment, the municipality should be able to determine how best to satisfy the RDP and then and only then should it be required to address the unmet need. Despite the provision of the Fair Housing Act that states that municipalities are not required to expend municipal funds to provide affordable housing, some municipalities have done or are planning to do this voluntarily. If a municipality seeking a new or revised prior round vacant land adjustment decides to help fund the construction of a 100 percent affordable project to address its RDP rather than zoning a site for inclusionary development or redevelopment, COAH should not require the municipality to apply the credits it receives for the 100 percent affordable housing development toward the unmet need. Instead, as in the past, COAH should permit municipalities receiving vacant land adjustments the opportunity to satisfy the RDP first and then address the unmet need. To compel the municipality to first apply such credits to the unmet need would be a significant deterrent to such expenditures and efforts on the part of the municipality. Similarly, a municipality that finds a way to address its RDP through the expenditure of municipal revenues should not be compelled to also zone or provide for development or redevelopment of the site or sites giving rise to the RDP. This would be plainly contrary to COAH's practice in the past of allowing the municipality to exercise its discretion in how best to address the RDP once it has been established.

RESPONSE: The Council has decided to change its practice with regard to this issue. The Council believes that if a

municipality has not already received a vacant land adjustment, it must apply its credits to the unmet need first and submit a plan to address the RDP. The rule will be amended in the near future to say that if the credit was constructed after June 6, 1999, the municipality may apply the credit to the RDP or unmet need, at the municipality's discretion, provided the credit wasn't a mechanism previously included in the plan to address unmet need. Municipalities may apply credits for units constructed after June 6, 1999, to the growth share obligation provided credits

COMMENT: This section states that a municipality that is requesting a vacant land adjustment for the first time or whose vacant land adjustment was not granted as part of a second round substantive certification shall apply its eligible credits toward its unmet need at the time of petition prior to applying credits toward its RDP. How does this affect a municipality that received substantive certification with a vacant land adjustment in the second round and then, as a result of a challenge, was told to come up with a higher RDP but has not yet received substantive certification from COAH on the revised RDP? Will any mechanisms being developed to address the new RDP be counted instead toward the unmet need? What about efforts to capture growth share obligations in such municipalities? Will those efforts result in affordable units that get applied to the unmet need and market units that count toward growth share? All of this needs clarification. The whole issue of vacant land adjustments has been turned on its ear since 2004 by COAH's altered policy toward the unmet need. This is an issue that is very likely to breed lawsuits from disgruntled, opportunistic developers.

RESPONSE: The rule will be amended in the near future to say that if the unit receiving credit was constructed after June 6, 1999, the municipality may apply the credit to the RDP or unmet need, at the municipality's discretion, provided the unit receiving credit was not previously included in the plan to address unmet need. Municipalities may apply credits for units constructed after June 6, 1999, to the growth share obligation provided credits have first been applied to the RDP.

COMMENT: This provision will make it difficult for a municipality seeking a vacant land adjustment to satisfy its RDP. It provides that credits be applied to the unmet need, before being applied to the RDP. If a municipality seeks and obtains a vacant land adjustment, it is only because there is insufficient land to accommodate the imposed obligation. To suggest that credits based on housing activity first be applied to unmet need, denies the municipality the ability to satisfy the realistic development potential.

RESPONSE: Municipalities that are seeking a vacant land adjustment for the first time or whose vacant land adjustment was not granted as part of a second round substantive certification or judgment of compliance may still apply credits for built units toward its affordable housing obligation. They are not restricted in that respect. The only difference for this category of municipalities is that these units would be applied toward the total prior round obligation before the RDP is established. The RDP determination is based on vacant land and credits are existing units on land that is not vacant. Therefore, it is realistic to expect that the municipality can address the RDP if it has vacant land. The rule will be amended in the near future to say that if the credited unit was constructed after June 6, 1999, the municipality may apply the credit to the RDP or unmet need, at the municipality's discretion, provided the credited unit wasn't a mechanism previously included in the plan to address unmet need. Municipalities may apply credits for units constructed after June 6, 1999, to the growth share obligation provided credits have first been applied to the RDP.

N.J.A.C. 5:97-5.1(c) and (d)

COMMENT: This approach should be modified and that all vacant land adjustments should be reevaluated. In numerous municipalities throughout the Second Round, COAH approved zero-unit RDPs and required municipalities to do very little in "the terms of the substantive certification." In those plans, there were often not even overlay zones. Now that COAH is addressing prior rounds unmet need more rigorously, it is important for COAH continue the validity of a prior rounds vacant land adjustment only if the municipality adopts realistic measures to address the unmet need. A development fee ordinance without a plan to spend the funds to create affordable housing is not, for example, an adequate compliance measure to address unmet need.

RESPONSE: It is not the intent of the Council to review a municipality's previously granted vacant land adjustment, unless the municipality failed to implement the terms of the substantive certification or judgment of compliance. However, during the Council's review of the municipality's petition for substantive certification, the Council will review the municipality's mechanisms to address unmet need and may require the municipality to amend or add additional mechanisms in accordance with N.J.A.C. 5:97-5.3(b). COAH will pay particular attention to municipalities who proposed a development fee ordinance to address unmet need and did not spend any development fees for this purpose.

N.J.A.C. 5:97-5.2

COMMENT: The rule should be amended to require that every town that is seeking a vacant land adjustment provide realistic opportunities for special needs housing and group homes, both of which are funded through private and governmental sources, and that the realistic number of special needs and group home units be included in the RDP. Please state whether COAH will amend its RDP regulation to require consideration of this approach.

RESPONSE: The Council's practice with regard to vacant land adjustments remains unchanged from N.J.A.C. 5:93. The Council does not feel any changes are necessary. The Council does not dictate how a municipality must address its RDP. The municipality is responsible for submitting a plan that meets its overall affordable housing obligation. Municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, market-to-affordable programs or reconstruction programs. The adjustment process was intentionally designed to create predictability for all parties. The Council does not believe that the housing obligation should vary based on the response chosen by the municipality.

COMMENT: Affordable housing goals can be met without compromising the environment through the integration of local affordable housing planning with DEP's program requirements, such as the Water Quality Management Planning rules.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The DEP offers to work with COAH in its review of vacant land adjustment proposals, pursuant to N.J.A.C. 5:97-5.2, from municipalities where the adjustment is being made because of environmentally sensitive features or on DEP regulations. DEP's review could assist COAH in determining the feasibility of the site for development based on our programs.

RESPONSE: The Council appreciates DEP's assistance and support.

COMMENT: The rules establish an unnecessarily complex procedure for a municipality to request a downward adjustment in growth projections. It is likely that numerous municipalities, particularly in the Highlands region, would have to undergo this process due to overstated housing and employment projections. In effect, COAH will be unfairly passing the time and resource burden of correcting these poorly constructed projections onto municipalities, diverting energy from ongoing planning initiatives, and creating an undeserved financial burden.

RESPONSE: The Council is planning on holding seminars once the rules are adopted, which will deal with the adjustment process, in addition to providing a worksheet to assist municipalities with the adjustment process.

COMMENT: The rule should be amended to include consideration of how many units a 100 percent affordable development could contribute to the satisfaction of a municipality's affordable housing obligation. COAH should also require consideration of, for instance, a 50 percent set aside that uses public subsidies for the affordable units. Land for such a project could be paid for substantially with Balanced Housing funding. The realistic number of these units should be added to the RDP. Please state whether COAH will amend its RDP regulation to require consideration of these approaches.

RESPONSE: The Council's practice with regard to vacant land adjustments remains unchanged from N.J.A.C. 5:93. The Council does not feel any changes are necessary. The Council does not dictate how a municipality must address its RDP. The municipality is responsible for submitting a plan that meets its overall affordable housing obligation. Municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, market-to-affordable programs or reconstruction programs. The adjustment process was intentionally designed to create predictability for all parties. The Council does not believe that the housing obligation should vary based on the response chosen by the municipality.

COMMENT: The deduction of vacant lands that lack adequate sewer and/or water capacity and for which sewer and/or water capacity is unlikely to become available prior to 2018 should be excluded from Round three growth share, provided that adequate documentation to support this condition is submitted. These lands could be included in subsequent COAH rounds if infrastructure becomes available. As an alternative, presumptive densities consistent with DEP's nitrate dilution based septic density standards for areas served by individual on-site septic systems could be applied to these lands.

RESPONSE: The Council's rules and projections will be amended in the near future to take into account the adopted DEP Water Quality Management Planning Rules, N.J.A.C. 7:15. In addition, the rules on the growth projection adjustment will be amended to provide different minimum units and jobs per acre based on planning areas, centers, sewer service areas and areas outside of sewer service areas. In areas outside of sewer service areas, the rules will reflect density based on septic standards consistent with DEP's new nitrate dilution standards. Lastly, the rules will be amended to allow a durational adjustment for sites addressing the growth share obligation.

COMMENT: The vacant land analysis/projected growth adjustment procedures are extensive and will require a considerable amount of local resources to complete. Fiscal constraints may make this procedure difficult for some municipalities to undertake.

RESPONSE: The Council is planning to hold seminars once the rules are adopted, which, among other things, will deal with the adjustment process, and provide a worksheet to assist municipalities with the adjustment process.

COMMENT: N.J.A.C. 5:97-5.2 should read as follows: "Within the areas of the State regulated by the Pinelands Commission, the Highlands Water Protection and Planning Council, the Division of Coastal Resources of DEP and the New Jersey Meadowlands Commission, municipalities may exclude sites based on: The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50; The Highlands Water Protection and Planning Act rules, N.J.A.C. 7:38; and The Highlands Regional Master Plan."

RESPONSE: The Highlands Regional Master Plan has not been adopted as of the date of this publication. The Council will consider its impact once the Master Plan is adopted by the Highlands Council.

COMMENT: Municipalities should be permitted to use, as the basis of their growth share, projections developed as part of county WMPs or included in endorsed plans or developed as part of the Highlands Plan Conformance Process. The inventory of vacant parcels should be categorized according to SDRP Planning Area (PA). Deduction of vacant lands in PAs 3, 4, 5 and 5B that are not within designated centers or sewer service areas, and for which open space, historic and farmland preservation are planned should be permitted. A similar approach should be applied regarding the treatment of vacant lands based on the Highlands RMP - Land Use Capability Map - Overlay Zones.

RESPONSE: In order to respond to the Appellate Division's concerns in *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95*, the Council determined that an adjustment to these projections should only be warranted by lack of available land capacity and not by factors that are within the municipality's control, a process similar although not identical to the vacant land adjustment process. Like the vacant land adjustment process, the Council believes that uniform minimum dwelling units and jobs per acre is a reasonable approach. The growth projection adjustment process was intentionally designed to create predictability for all parties, as with the vacant land adjustment. However, the

Council's rules and projections will be amended in the near future to take into account the adopted DEP Water Quality Management Planning Rules, N.J.A.C. 7:15. In addition, the rules on the growth projection adjustment will be amended to provide different minimum units and jobs per acre based on planning areas, centers, sewer service areas and areas outside of sewer service areas. In areas outside of sewer service areas, the rules will reflect density based on septic standards consistent with DEP's new nitrate dilution standards. However, the commenter should be aware that the Third Round Memorandum of Understanding between the Council and the State Planning Commission which was adopted July 13, 2004, contains the interagency agreement that: "All planning areas can accommodate growth and therefore can accommodate a commensurate affordable housing obligation in a manner consistent with the goals, objectives, and policies of the State Plan." This is a realistic recognition that growth occurs throughout New Jersey, in all planning areas. Therefore, the Council does not believe the change to the rule that the commenter suggests is warranted. In addition, the Highlands Regional Master Plan has not been adopted as of the date of this publication. The Council will consider its impact once the Master Plan is adopted by the Highlands Council. Lastly, a municipality seeking a vacant land adjustment may remove active recreational lands and conservation, parklands and open space (passive recreation) lands from its vacant land inventory provided the land is dedicated for that purpose. The municipality may remove an additional three percent for active recreation and three percent for passive recreation provided the site(s) are purchased and limited to active or passive recreational within one year of substantive certification.

COMMENT: The rule should be amended to require that every town that is seeking a vacant land adjustment project the number of bonuses that it will obtain and that this number be included in the RDP. This change would also ensure that the RDP is based on what is actually realistic. Please state whether COAH will amend its RDP regulation to require consideration of this approach.

RESPONSE: The Council's practice with regard to vacant land adjustments remains unchanged from N.J.A.C. 5:93. The Council does not feel any changes are necessary. The Council does not dictate how a municipality must address its RDP. The municipality is responsible for submitting a plan that meets its overall affordable housing obligation. Municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, market-to-affordable programs or reconstruction programs. The adjustment process was intentionally designed to create predictability for all parties. The Council does not believe that the housing obligation should vary based on the response chosen by the municipality.

COMMENT: The rule should be amended to require that every town that is seeking a vacant land adjustment project the number of RCAs that it will send and that this number be included in the RDP. Please state whether COAH will amend its RDP regulation to require consideration of this approach.

RESPONSE: The Council's practice with regard to vacant land adjustments remains unchanged from N.J.A.C. 5:93. The Council does not feel any changes are necessary. The Council does not dictate how a municipality must address its RDP. The municipality is responsible for submitting a plan that meets its overall affordable housing obligation. Municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, a market-to-affordable program or reconstruction programs. The adjustment process was intentionally designed to create predictability for all parties. The Council does not believe that the housing obligation should vary based on the response chosen by the municipality.

COMMENT: There's a procedure for how a vacant land adjustment or land capacity adjustment would be conducted. One of the things that's required is to review municipally or other state agency-owned land. In order to remove it you have to justify that it was purchased before 1997 with some sort of a restriction or indication that it was meant for public purpose. And then you can also exclude it if it's wetlands or is somehow environmentally sensitive. But what about land that was purchased by a municipality at the taxpayers' request for the sake of recreation or open space and not necessarily because of environmental constraints? The commenter doesn't think that a municipality that has gone through that process should have to include that in a potentially developable site for inclusionary housing.

RESPONSE: A municipality seeking a vacant land adjustment may remove active recreational lands and

conservation, parklands and open space (passive recreation) lands from its vacant land inventory provided the land is dedicated for that purpose. The municipality may remove an additional three percent for active recreation and three percent for passive recreation provided the site(s) are purchased and limited to active or passive recreational within one year of substantive certification.

COMMENT: Vacant land adjustments do not allow the removal of agricultural lands not preserved. Leaving only preserved lands and not planned does not supply adequate lands for preservation. Farms in the process and those that have applied for farmland preservation should be included in vacant land adjustments.

RESPONSE: Municipalities that seek an adjustment to their affordable housing obligation may remove agricultural lands not already preserved from the vacant land inventory up to the caps provided, as these lands are considered as passive recreational lands. The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. If the land is already dedicated as passive or active recreation or agricultural land where the development rights to these lands have been purchased or restricted by covenant, these parcels may be removed from the vacant land inventory even if they are over the three percent cap. If additional sites are proposed for designation, these sites may only be excluded from the vacant land inventory if they are within the three percent caps for active and passive recreation lands respectively, for the whole municipality pursuant to N.J.A.C. 5:97-5.2(d)6 and 7. The municipality then has one year to purchase and limit these lands for active and passive recreation. Although the Council understands the necessity to preserve these lands, the Council is also concerned with the scarcity of land in the state. The percentage for active recreation is consistent with the Balanced Land Use guidelines in the New Jersey Statewide Comprehensive Outdoor Recreation Plan and the percentage for passive recreation is consistent with the Fair Housing Act (N.J.S.A. 52:27D-310.2).

COMMENT: The rule should be amended to require that every town that is seeking a vacant land adjustment provide at least one 100 percent age-restricted development and that the age-restricted cap be satisfied only through that development. Doing so would maximize the amount of family housing that could be provided while ensuring that no part of the RDP is satisfied through age-restricted housing, which is uniquely appropriate for a 100 percent affordable development because it is usually feasible to develop such housing at higher densities than family housing. It is unlikely that a municipality could not find a piece of land that would be appropriate for a 100 percent age-restricted development. Please state whether COAH will amend its RDP regulation to require consideration of this approach.

RESPONSE: The Council's practice with regard to vacant land adjustments remains unchanged from N.J.A.C. 5:93. The Council does not feel any changes are necessary. The Council does not dictate how a municipality must address its RDP. The municipality is responsible for submitting a plan that meets its overall affordable housing obligation. Municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, market-to-affordable programs or reconstruction programs. The adjustment process was intentionally designed to create predictability for all parties. The Council does not believe that the housing obligation should vary based on the response chosen by the municipality.

COMMENT: How will redevelopment areas be addressed in vacant land adjustments? How will areas that are being investigated, but not yet declared areas in need of redevelopment, be treated?

RESPONSE: A municipality that is requesting a vacant land adjustment is responsible for demonstrating to the Council that the municipal response to its housing obligation is limited by the lack of land capacity. The Council performs a thorough analysis of vacant land, reviewing sites that are devoted to a specific use which involves relatively low-density development which could create an opportunity for affordable housing if inclusionary zoning was in place, and any areas in the municipality that may develop or redevelop in order to determine the municipality's realistic development potential (RDP). N.J.A.C. 5:97-5.2(c) provides some examples of likely sites for reuse or redevelopment that may be included in the vacant land inventory that could contribute to the calculation of the RDP. These include sites that are devoted to a specific use which involves relatively low-density development which could create an opportunity for affordable housing if inclusionary zoning was in place. Such sites include, but are not limited to: golf

courses not owned by its members; farms in SDRP planning areas one, two and three; driving ranges; nurseries; and nonconforming uses. Therefore, a proposed redevelopment area may increase the municipality's RDP. In addition, N.J.A.C. 5:97-5.2(c)6 provides some examples of likely sites for redevelopment that may be used as mechanisms to capture unmeet need. Examples of such areas include, but are not limited to: a private club owned by its members; publicly owned land; downtown mixed use areas; high density residential areas surrounding the downtown; areas with a large aging housing stock appropriate for accessory apartments; properties that may be subdivided and support additional development; and any parcel(s) that has the potential to redevelop. Where appropriate and realistic, the Council may require an overlay zone for inclusionary zoning as a condition for granting a vacant land adjustment. However, this analysis is done on a case by case basis by the Council.

COMMENT: COAH should amend this regulation so that its RDP analysis considers whether mechanisms other than inclusionary developments will be employed to satisfy a municipality's affordable housing obligation. In its present form, this regulation does not consider what is actually realistic, but rather what is possible if only one approach to meeting an affordable housing obligation is used. The entire RDP analysis assumes that an inclusionary development is the only mechanism that a municipality would use to meet its affordable housing obligation, but acknowledges a fundamental disconnect between the way the RDP is calculated and the way it is satisfied. N.J.A.C. 5:97-5.2(j) states that "[t]he RDP shall not vary with the mechanisms employed by the municipality." Thus, the analysis focuses exclusively on how many units of affordable housing an inclusionary development could generate even if a municipality does not plan to zone for an inclusionary development. This approach may make sense if the only way to provide affordable housing in a given municipality was through inclusionary developments. The RDP regulation in its current form is arbitrary and capricious and a violation of the Mount Laurel doctrine because it is not connected to reality and because it unnecessarily underestimates the amount of affordable housing a municipality could provide if it employed the full range of compliance mechanisms.

RESPONSE: The Council's practice with regard to vacant land adjustments remains unchanged from N.J.A.C. 5:93. The commenter is referring to how the Council determines the municipality's RDP on the remaining sites on the vacant land inventory. The Council's rules are consistent with the FHA which requires an adjustment of the affordable housing obligation based in available land resources. The rules establish a minimum of six units per acre and a maximum 20 percent set-aside in calculating the RDP. The concept of an RDP is that these are sites that could "potentially develop" if inclusionary zoning were in place. However, the municipality is not required to zone these sites for inclusionary development and may address its RDP using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6. The Council believes that uniform minimum dwelling units per acre is a reasonable approach and municipalities should be provided flexibility to respond in a way that addresses the needs of the community. The adjustment process was intentionally designed to create predictability for all parties. The Council does not believe that the housing obligation should vary based on the response chosen by the municipality.

COMMENT: While municipalities may exclude sites based on wetland constraints, Category One waterways, flood hazard constraints, slopes in excess of 15 percent and lands precluded from development that are owned by nonprofit organizations, counties and the State or Federal government, strangely, N.J.A.C. 5:97-5.2(d)6 states that the total active recreational lands do not exceed a three percent cap on the municipality's total developed and undeveloped acreage. Under N.J.A.C. 5:97-5.2(d)7, it further states that "additional land reserved for conservation, parklands or open space, provided that the total lands designated and/or reserved for conservation, parklands or open space do not exceed three percent of the municipality's total land area." It appears that the three percent cap means that the excess municipal recreation, conservation, parklands and open space parcels, while clearly removed from growth, are nonetheless utilized for COAH growth share projections.

RESPONSE: This criteria is only for municipalities that seek an adjustment to their affordable housing obligation. Only non-dedicated lands will be utilized in the growth projection adjustment or realistic development potential calculation. If the land is already designated as passive or active recreation, these parcels may be removed from the vacant land inventory even if they are over the three percent cap. If additional sites are proposed for designation, these sites may only be excluded from the vacant land inventory if they are within the three percent caps for active and

passive recreation lands respectively, for the whole municipality pursuant to N.J.A.C. 5:97-5.2(d)6 and 7. The municipality then has one year to purchase and limit these lands for active and passive recreation. Although the Council understands the necessity to preserve these lands, the Council is also concerned with the scarcity of land in the state. The Council believes that the percentages are reasonable in the interest of affordable housing. In addition, the percentage for active recreation is consistent with the Balanced Land Use guidelines in the New Jersey Statewide Comprehensive Outdoor Recreation Plan and the percentage for passive recreation is consistent with the Fair Housing Act (N.J.S.A. 52:27D-310.2).

COMMENT: The criteria established to determine a municipality's Realistic Development Potential (RDP) in support of a vacant land analysis is purposely broad and ambiguous so as to give COAH unbridled control over local land use planning. For example, N.J.A.C. 5:97-5.2(c)4 requires an inventory of sites ". . .which involves relatively low-density development and could create an opportunity for affordable housing if inclusionary zoning was in place." Who will determine what constitutes "relatively low density" and by what standard? Paragraph (c)6 is even more troubling as it calls for an inventory of ". . .any areas in the municipality that may develop or redevelop." Examples offered appear to leave nothing out but most troubling is the requirement to include in such an inventory ". . .any parcel(s) ripe for redevelopment." "Ripe" is not among the eight criteria set forth in N.J.S.A. 40A:12A-7 (Local Redevelopment and Housing Law), therefore COAH should clarify how such sites would be deemed appropriate for the intended purpose.

RESPONSE: The Council does not dictate how a municipality shall zone a site when a growth projection or vacant land adjustment is granted. The minimum units and jobs per acre is a minimum of what that land could sustain if zoned for that purpose at that density. For a growth projection adjustment, the adjusted household and employment growth is then converted to a growth share obligation using the ratios set forth in N.J.A.C. 5:97-2. This process is similar to a vacant land adjustment, where a minimum units per acre is assigned to vacant land to determine the realistic development potential (RDP) of the municipality. However, the municipality is not required to zone these sites for inclusionary development and may address its RDP using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6. Like the vacant land adjustment process, the Council believes that uniform minimum dwelling units and jobs per acre is a reasonable approach. The growth projection adjustment process was intentionally designed to create predictability for all parties, as was the vacant land adjustment. The term redevelopment does not always indicate that the site will redevelopment according to the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-7). Redevelopment is also a general term to indicate reuse or to develop something again, to an existing use, or to restore existing things, such as buildings or neighborhoods to a better condition. The Council does not believe that criteria is necessary for identifying sites that may be viable for adaptive reuse or redevelopment activity. This depends on the specific nature of the property, as well as many other factors, and therefore must be reviewed on a case-by-case basis by the professional planning staff of the Council.

COMMENT: The proposed rules for determining whether a site is suitable for development need to be consistent with other applicable State and Federal laws governing land use in New Jersey. Most State and Federal statutes that regulate land use and limit development suitability apply regardless of where you are in the state. For example, development constraints associated with Category One waters apply in the Highlands, as well as, all other areas of the State. However, the proposed rules suggest that Category One waters are excluded from consideration for determining whether a site is suitable for development if, for example, that site is located in the Highlands Region. Therefore, the proposed rules need to more clearly specify the criteria to be used to identify environmentally sensitive lands that do not arbitrarily limit consideration based solely on geographic areas by excluding applicable regulations that legitimately affect development suitability on a site. The criteria for defining development suitability in this section should also be consistent with site suitability criteria in other sections of the rule such as in N.J.A.C. 5:97-3.13.

RESPONSE: The two sections are consistent with each other and the Council believes the rule is clear. Any site or portion of a site that is precluded from development according to a State or Federal regulation may be removed from the vacant land inventory when seeking an adjustment.

COMMENT: The criteria established to determine a municipality's Realistic Development Potential (RDP) in support of a vacant land analysis is purposely broad and ambiguous so as to give COAH unbridled control over local land use planning. This is nothing less than a circumvention not only of a municipality's power to zone as established in the Municipal Land Use Law, it represents the type of discredited maneuvers which shut out the public and have no place in the planning process today.

RESPONSE: The Council's practice with regard to vacant land adjustments remains unchanged from N.J.A.C. 5:93. The Council does not dictate how a municipality shall zone a site when an adjustment is granted. The minimum units per acre is a minimum of what that land could sustain if zoned for inclusionary development at that density. The municipality is then assigned an RDP based on that number. However, the municipality is not required to zone these sites for inclusionary development and may address its RDP using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6.

COMMENT: The criteria used for establishing Realistic Development Potential in the proposed rules should be consistent with the State Plan, applicable regulations governing land use in New Jersey, and compatible with the established pattern of development in the community as envisioned in the Fair Housing Act. The proposed rules establish procedures for determining the Realistic Development Potential of a site that is suitable for development in accordance with the requirements for seeking a vacant land adjustment. The rules do acknowledge that COAH shall rely on appropriate regulatory agency's regulations in determining whether there is sufficient capacity to support development on a site. However, N.J.A.C. 5:97-5.2(h) requires COAH to consider sites or parts thereof for inclusionary development based on a minimum presumptive density of six units to the acre. Establishing a minimum presumptive density and uniformly applying that to all areas of the state is inconsistent with the provisions of the Fair Housing Act and will force municipalities to zone for uses of land at unrealistic and arbitrary presumptive densities because the rules do not require that the presumptive densities be established consistent with applicable land use law. In order to be consistent with the Fair Housing Act, COAH should amend the rules to provide a mechanism whereby the minimum presumptive density for calculating Realistic Development Potential can be adjusted based upon the location, the existing pattern of development, and the planning area designations of the State Plan rather than rely on a "one size fits all" approach, which is also consistent with NCNBR's approach in Appendix F.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. The citation the commenter is referring to spells out the way in which the Council determines the municipality's RDP on the remaining sites on the vacant land inventory. The rules establish a minimum of six units per acre and a maximum 20 percent set-aside in calculating the RDP. The concept of an RDP is that these are sites that could "potentially develop" if inclusionary zoning were in place. However, the municipality is not required to zone these sites for inclusionary development and may address its RDP using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6. The Council believes that uniform minimum dwelling units per acre is a reasonable approach. The adjustment process was intentionally designed to create predictability for all parties.

COMMENT: The proposed rules arbitrarily limit the applicable statutes that can be used for determining whether a site is suitable. For example, Category One waters have implications on development suitability in accordance with not only N.J.A.C. 7:15 as specified in the proposed rules but also N.J.A.C. 7:8, N.J.A.C. 7:9B, N.J.A.C. 7:14 and N.J.A.C. 7:14A. Other rules such as the Freshwater Wetlands Protection at N.J.A.C. 7:7A apply in the Pinelands, Highlands and Coastal Zone in addition to the remaining areas of the state with the exception of the Meadowlands which is under the jurisdiction of the U.S. Army Corps of Engineers in accordance with Section 404 of the Federal Clean Water Act.

RESPONSE: The Council will clarify this in a rule amendment in the near future. The commenter should be aware that any site or portion of a site that is precluded from development according to a State or Federal regulation may be removed from the vacant land inventory when seeking an adjustment.

COMMENT: Communities which have obtained vacant land adjustments and had realistic development potentials

(RDPs) verified by COAH in round two, should be permitted to continue to utilize them subject to updating and verification, to satisfy their prior round obligation. Moreover, provided that mechanisms to meet the unmet need over and above the RDP from the prior rounds which are still in place should be credited against the prior round obligation.

RESPONSE: The commenter is correct. It is not the intent of the Council to review a municipality's previously granted vacant land adjustment, unless the municipality failed to implement the terms of the substantive certification or judgment of compliance. However, during the Council's review of the municipality's petition for substantive certification, the Council will review the municipality's mechanisms to address unmet need and may require the municipality to amend or add additional mechanisms in accordance with N.J.A.C. 5:97-5.3(b).

COMMENT: COAH's proposed rules should be clarified to specify that where the Highlands Regional Master Plan and the rules at N.J.A.C. 7:38 result in a situation where the resource protection and capacity limitations do not provide opportunities to address unmet need that relief be afforded to these municipalities.

RESPONSE: The Council does not believe this change is necessary. The Council will review municipal opportunities to address unmet need on a case-by-case basis. The Council notes that, as of the date of this rule adoption, the Highlands RMP is in draft form and has not been adopted. Upon adoption of the Highlands RMP, the Council will consider its impacts. COAH intends to work cooperatively with the Highlands Council to enter into a Memorandum of Understanding in the near future.

N.J.A.C. 5:97-5.2(a)

COMMENT: "RDP" should be spelled out.

RESPONSE: The full spell out of the acronym RDP is provided in the definition, N.J.A.C. 5:97-1.3. In addition, the first instance the word is used in the text of the rules is in N.J.A.C. 5:97-4.1(a), and the word is fully spelled out.

N.J.A.C. 5:97-5.2(c)4

COMMENT: This section indicates that COAH does not recognize productive agricultural land use by describing "a farm in Planning Area 1 or 2" and "nursery" as areas that municipalities should identify as potential inclusionary housing sites. The statistics show that both of these land uses tend to be the most profitable and productive in this State. Indeed, the nursery/greenhouse industry produces farm crops with the highest value in the State. COAH must make sure that municipalities inform themselves fully of these values before assuming that these would make good sites.

RESPONSE: The Council's practice with regard to vacant land adjustments remains unchanged from N.J.A.C. 5:93. If there is no restriction on development on the land, there is a possibility that the land could be developed at a future date. The commenter should note that the Council does not dictate how a municipality shall zone a site when an adjustment is granted. The minimum units per acre is a calculation of what that land could sustain if zoned for inclusionary development at that density. The municipality is then assigned an RDP based on that number. However, the municipality is not required to zone these sites for inclusionary development and may address its RDP using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6.

N.J.A.C. 5:97-5.2(c)4 through 6

COMMENT: These provisions appear to be inconsistent with the Fair Housing Act, which states at N.J.S.A. 52:27D-310.1, "No municipality shall be required to utilize for affordable housing purposes land that is excluded from being designated as vacant land."

RESPONSE: The Council's rule is consistent with the FHA. Any land that is excluded from the vacant land inventory for the reasons stated in N.J.A.C. 5:97-5.2 will not count toward the municipality's RDP or adjusted growth projection adjustment.

N.J.A.C. 5:97-5.2(c)5

COMMENT: Municipalities should be encouraged to use GIS data for preparing all maps included with its Fair Share Plan and Housing Element. The use of GIS analyses and technology for completing the vacant land analysis should be supported.

RESPONSE: Municipalities are encouraged to use GIS for preparing all maps and analyses with its Housing Element and Fair Share Plan, and are also encouraged to provide maps and GIS shapefiles to the Council in electronic format. This will be communicated by the Council at its future seminars pertaining to the rules, and will be indicated on the Council's Housing Element and Fair Share Plan application.

N.J.A.C. 5:97-5.2(c)6

COMMENT: The procedure requires an inventory of areas that may develop or redevelop. Objective criteria for identifying redevelopable sites should be included in the rules and applied uniformly.

RESPONSE: The Council does not believe that criteria are necessary for identifying sites that may be viable for adaptive reuse or redevelopment activity. This depends on the specific nature of the property, as well as many other factors, and therefore must be reviewed on a case-by-case basis. However, N.J.A.C. 5:97-5.2(c)4 provides some examples of likely sites that may be included in the vacant land inventory that could contribute to the calculation of the RDP. These include sites that are devoted to a specific use which involves relatively low-density development which could create an opportunity for affordable housing if inclusionary zoning was in place. Such sites include, but are not limited to: golf courses not owned by its members; farms in SDRP Planning Areas 1, 2 and 3; driving ranges; nurseries; and nonconforming uses. In addition, N.J.A.C. 5:97-5.2(c)6 provides some examples of likely sites for redevelopment that may be used as mechanisms to capture unmeet need. Examples of such areas include, but are not limited to: a private club owned by its members; publicly owned land; downtown mixed use areas; high density residential areas surrounding the downtown; areas with a large aging housing stock appropriate for accessory apartments; properties that may be subdivided and support additional development; and any parcel(s) that has the potential to redevelop.

COMMENT: The commenter supports the requirement that towns submit available lands for development and redevelopment, but would like to see redevelopment be encouraged first and foremost. Promoting redevelopment is wise land use that will rejuvenate our urban and town centers and lessen environmental impacts of additional growth.

RESPONSE: The Council encourages the reuse and redevelopment of buildings and land. The rules contain a new section on redevelopment has been added to capture the unique circumstances surrounding redevelopment that occurs specifically under the auspices of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

N.J.A.C. 5:97-5.2(d)

COMMENT: The commenter requests the addition of the Highlands Regional Master Plan to the list of land use plans on whose basis the municipalities may exclude sites. Specifically, sites should be excluded that are located in the Protection Zone, the Forest Resource Area, the Agricultural Resource Area, Critical Habitat Resource Area, the Environmentally Constrained Conservation Zone, and the Environmentally Constrained Existing Community Zone. The Highlands Regional Master Plan provides land use policies and standards for both the Highlands Planning Area and the Preservation Area. The Highlands Water Protection and Planning Act Rules apply only in the Highlands Preservation Area. This demonstrates another instance in these rules where the Highlands Regional Master Plan has not received proper attention and recognition. The commenter also requests the addition of the following official plans that should be recognized by COAH and added to this section above: the N.J. Department of Transportation Scenic Byways Program management plans for scenic byways, such as Route 29 and Route 57; DEP management plans for state parks, forest and wildlife refuges; National Wild and Scenic Rivers Program Management Plans for federal Wild and Scenic Rivers

in New Jersey; the Appalachian National Scenic Trail Corridor Plan; Management and Acquisition Plans for all other federal lands in New Jersey, including National Wildlife Refuges, National Parks, Recreation Areas, Historic Sites, and National Heritage Corridors.

RESPONSE: The Highlands Regional Master Plan has not been adopted as of the date of this publication. The Council will consider its impact once the Master Plan is adopted by the Highlands Council. The Council does not think it is necessary to include the programs listed by the commenter, as the Council's general philosophy regarding the exclusion of land for environmental reasons, is that the site or portion of the site may be excluded from the vacant land inventory if it is similarly prohibited from all other uses by Federal or state regulations. Therefore, if the plans noted by the commenter have regulatory authority and preclude development of a site or a portion of a site, the Council would permit exclusion of the site or the portion of the site, as applicable.

COMMENT: The rule excludes already preserved agricultural lands, but N.J.A.C. 5:97-5.2(d)6iii tells municipalities to deduct "agricultural lands" from the total of developable lands. These rules must be clarified about the process municipalities must use in deciding how and whether to include farmland in their inventory of "vacant" or "developable" lands.

RESPONSE: The commenter is incorrect regarding the application of the rule. The rule says that the municipality may deduct the lands excluded by the Council's rules regarding historic and architecturally important sites, agricultural lands and environmentally sensitive lands. This means the municipality may deduct dedicated agricultural lands from the total to determine developable land.

COMMENT: The Fair Housing Act requires that adjustments for fair share shall be made whenever the pattern of development is contrary to the planning designations in the State Development and Redevelopment Plan (N.J.S.A. 52:27D-307.c(2)(e)). Thus, the parcel inventory required by COAH for a vacant land adjustment should include the State Planning Area designation for the parcel so that it may consider whether the development is contrary to the planning designations. Further, pursuant to N.J.S.A. 52:27D-307.i(2)(c), the vacant land adjustment rule should be modified to explicitly permit exclusions of sites whose development would be contrary to the planning designations of the State Development and Redevelopment Plan.

RESPONSE: The commenter should be aware that the Third Round Memorandum of Understanding between COAH and the State Planning Commission which was adopted July 13, 2004, contains the interagency agreement that: "All planning areas can accommodate growth and therefore can accommodate a commensurate affordable housing obligation in a manner consistent with the goals, objectives, and policies of the State Plan." This is a realistic recognition that growth occurs throughout New Jersey, in all planning areas. Therefore, the Council does not believe a change to the rule is warranted.

COMMENT: The list of unsuitable acreage should be expanded to include areas without adequate infrastructure, such as water and sewer service.

RESPONSE: The Council does not believe that is change is warranted as sewer or septic and water may become available to the site(s). However, the Council's rules and projections will be amended in the near future to take into account the adopted DEP Water Quality Management Planning Rules, N.J.A.C. 7:15. In addition, the rules on the growth projection adjustment will be amended to provide different minimum units and jobs per acre based on planning areas, centers, sewer service areas and areas outside of sewer service areas. In areas outside of sewer service areas, the rules will reflect density based on septic standards consistent with DEP's new nitrate dilution standards. Lastly, the rules will be amended to allow a durational adjustment for sites addressing the growth share obligation.

N.J.A.C. 5:97-5.2(d)1

COMMENT: Many municipalities retain publicly owned parcels for any number of public uses, from utilities

infrastructure, recreation, and public works storage. Municipalities are now being forced to determine uses of properties immediately to avoid NJDEP Recreation and Open Space Inventory (ROSI) restrictions and affordable housing restrictions. Municipalities need flexibility in determining the use of public properties.

RESPONSE: The Council's rules remain consistent with this requirement of the FHA, N.J.S.A. 52:27D-310.1.

N.J.A.C. 5:97-5.2(d)3

COMMENT: Agricultural lands as mentioned in N.J.A.C. 5:97-5.2(d)3 are not vacant lands, regardless of whether or not development rights are severed or restricted. They are in a productive use as taxable land and recognized by tax assessments as parcels which generate income for a land owner, just as an office building or commercial use are recognized by a tax assessment and generate income for the land owner. Considering agricultural lands as vacant is inconsistent with long-standing municipal land use legal precedents and contrary to the stated intent of this section. Where a site has development restrictions or other covenants, the site would be considered not suitable as defined at N.J.A.C. 5:97-1.4 because it is not free of encumbrances which preclude development of affordable housing.

RESPONSE: The Council's practice with regard to vacant land adjustments remains unchanged from N.J.A.C. 5:93. If there is no restriction on development on the land, there is a possibility that the land could be developed at a future date. However, the Council does not dictate how a municipality shall zone a site when an adjustment is granted. The minimum units per acre is a minimum of what that land could develop if zoned for inclusionary development at that density. The municipality is then assigned an RDP based on that number. However, the municipality is not required to zone these sites for inclusionary development and may address its RDP using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6.

N.J.A.C. 5:97-5.2(d)4

COMMENT: Out-of-date references to the Division of Coastal Resources and Coastal Resource and Development Policies should updated and corrected.

RESPONSE: The Council appreciates the commenter's assistance and the rule has been clarified.

COMMENT: The rule says that where regulations of the Pinelands, Highlands and Meadowlands permit development within an area, the parcels shall not be excluded. This is a very narrow standard that belies the complex nature of these regulations. Limited development is often allowed under certain exemptions at very low densities, not the densities envisioned under the proposed COAH regulations. Not only should the Council rely on other agency's regulations for specific sites and require their input, but the Council should limit the zoning density for the site based upon the recommendation and requirements of the municipality and any relevant regional entity (for example, Pinelands, Meadowlands, Highlands).

RESPONSE: The Highlands Regional Master Plan has not been adopted as of the date of this publication. The Council will consider its impact once the Master Plan is adopted by the Highlands Council. The Council will be updating its memoranda of understanding with various State agencies in the near future and will take the commenter's concerns into consideration at that time. In addition, the Council intends to enter into an MOU with the Highlands Council in the near future. It is also important to note that the municipality is not required to zone these sites for inclusionary development and may address its RDP or adjusted growth obligation using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6.

COMMENT: The commenter supports this section.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-5.2(d)4i

COMMENT: The rule states that "Where rules of the above agencies permit development within an area, the parcel(s) shall not be excluded from the vacant land inventory." This appears to mean that any land in an area where any amount of development is permitted must be deemed suitable for development within the municipalities' Fair Share Plans. This is irrational, since it is unconstitutional for government to forbid all forms of development across an area. Growth management plans like the Pinelands CMP do not forbid all development in any given area, but instead heavily restrict the types, intensities and design of development in areas designated for conservation. This sentence, therefore, should be deleted.

RESPONSE: If an environmentally sensitive site cannot be developed as regulated by the Pinelands Commission or other similar state entity, the parcel may be excluded from the vacant land inventory. This is the intent of N.J.A.C. 5:97-5.2(d)4i.

COMMENT: The language about environmentally sensitive lands in N.J.A.C. 5:97-5.2(d)4i should be changed to read:

"4. Environmentally sensitive lands as follows:

i. Within the areas of the State regulated by the Pinelands Commission, Highlands Water Protection and Planning Council, Land Use Regulation Division of DEP and the New Jersey Meadowlands Commission, municipalities may exclude sites based on: The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50; The Highlands Water Protection and Planning Act rules, N.J.A.C. 7:38; the Coastal Permit Program Rules, N.J.A.C. 7:7 the Coastal Zone Management Rules, N.J.A.C. 7:7E; the Flood Hazard Area Control Rules, N.J.A.C. 7:13; the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A, the Stormwater Management rules, N.J.A.C. 7:8 and the Zoning Regulations of the New Jersey Meadowlands Commission, N.J.A.C. 19:3. Where regulations of the above agencies permit development within an area, the parcel(s) shall not be excluded from the vacant land inventory.

RESPONSE: The Council's rule has been revised to reflect the correct division in DEP and rules that regulate the CAFRA region. The Council does not believe the other changes are necessary because the intent of the section is that the regulations of these special regions would be used in conjunction with the normal DEP regulatory restrictions to determine what is developable for the purpose of determining an adjustment.

COMMENT: The commenter asks that the rule be modified to indicate that sites in Rural Development Areas, Regional Growth Areas, Pinelands Towns and Villages may be exempted if they cannot be developed in accordance with the CMP. Furthermore, the rules should explicitly list that the environmentally sensitive management areas should be excluded from the inventory of vacant developable lands for the purpose of calculating the COAH obligation, namely the Preservation Area District, the Special Agricultural Production Area, the Agricultural Production Area and the Forest Area.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93 and does not believe that a clarification is necessary. If an environmentally sensitive site cannot be developed as regulated by the Pinelands Commission, the parcel may be excluded from the vacant land inventory. That is the intent of N.J.A.C. 5:97-5.2(d)4i. In addition, the Council will be updating its memorandum of understanding with the Pinelands Commission in the near future.

N.J.A.C. 5:97-5.2(d)4ii

COMMENT: The 15 percent slope determination should be made not from the U.S. Geological Survey (USGS) maps, which show a limited number of widely spaced contour intervals, but from maps that are more accurate, preferably with two-foot contour intervals. LIDAR maps, used by the New Jersey Highlands Council, provide two-foot contour intervals.

RESPONSE: The maps the commenter speaks of are only for the Highlands region. However, a municipality may

use the LIDAR maps to remove sites from the vacant land inventory with slopes in excess of 15 percent in the Highlands region.

COMMENT: The 15 percent slope restriction should apply whether or not there is a municipal ordinance in place. Steep slopes that are inappropriately developed pose a threat to the health and safety of both the public and local residents, and COAH should neither permit nor encourage development that poses such a threat.

RESPONSE: As long as the municipality regulates steep slopes across all relevant zones uniformly regardless of whether the zone is an inclusionary housing zone, the site or portion of the site may be removed from the vacant land inventory.

COMMENT: The commenter requests the addition of the following to the list of regulatory constraints: DEP Stormwater rule constraints, including riparian buffer protections, wellhead protection zones, groundwater recharge areas, surface water intake sites, Natural Heritage Priority Sites, and NJDEP Landscape Project Areas 3, 4 and 5, which are the habitat of State and Federal Threatened and Endangered Species. Federal law protects the habitat of Federally listed species. As written, the regulation permits only those types of environmentally-constrained sites that are listed to be excluded from the vacant land inventory. It therefore is essential that the list be expanded to permit exclusion of other types of sites that are equally important.

RESPONSE: The Council does not believe this change is necessary. The Council's general philosophy regarding the exclusion of land for environmental reasons is that the site or portion of the site may be excluded from the vacant land inventory if it is similarly prohibited from all other uses by Federal or state regulations.

COMMENT: The commenter requests the deletion and substitution of language in N.J.A.C. 5:97-5.2(d)4ii. COAH should delete references to National Wetlands Inventory and DEP wetlands maps and replace with a statement saying "as regulated pursuant to the Freshwater Protection Act and Flood Hazard Area Control Act." Also delete references to Category One waterway constraints, which will be covered by reference to the Freshwater Wetlands Protection Act and Flood Hazard Area Control Act Rules.

RESPONSE: The Council's rule will be amended in the near future to reflect some of the commenter's suggestions. However, the Council does not want to delete the references to the Category One waterway constraints and, therefore, will clarify what DEP regulations apply in the case of Category One waterway constraints.

N.J.A.C. 5:97-5.2(d)4iii

COMMENT: It is inappropriate to include this blanket regulation. Whenever the Legislature adopts such legislation requiring mapping of natural resources, COAH should carefully consider the impact of such legislation on the provision of affordable housing and promulgate a new regulation, which may include the reallocation of need from impacted municipalities to another municipalities where needed. Please state what steps COAH will take to ensure the constitutional obligation is met through a complete allocation of affordable housing need in the event such legislation is adopted.

RESPONSE: The Council must comply with any legislation that requires the mapping of natural resources that would restrict development capacity and provides a mechanism for the regulation of such resources. The Council's general philosophy regarding the exclusion of land for environmental reasons is that the site or portion of the site may be excluded from the vacant land inventory if it is similarly prohibited from all other uses by Federal or State regulations.

COMMENT: According to the definition provided in N.J.A.C. 5:97-5.2(d)4iii, a Wastewater Management Plan should be included among the other mapped restrictions on land use at N.J.A.C. 5:97-5.2(d)4ii as a basis for determining if lands potentially able to locate an affordable housing site are unsuitable for development and the reasons why the acreage is unsuitable as stipulated in N.J.A.C. 5:97-5.2(d). In addition, some natural resources are regulated,

but not mapped for various reasons including the potential for damage or destruction to the natural resource. Some natural resources are or could be regulated in the State of New Jersey because of Federal legislation. Other natural resources, such as public drinking water supplies and their drainages or well head protection areas should be recognized as valuable and afforded adequate local protections that may impact development potential but could protect public health. The vacant land adjustment procedures should be expanded to address these issues.

RESPONSE: The Council's rules and projections will be amended in the near future to take into account the adopted DEP Water Quality Management Planning Rules, N.J.A.C. 7:15. In addition, the rules on the growth projection adjustment will be amended to provide different minimum units and jobs per acre based on planning areas, centers, sewer service areas and areas outside of sewer service areas. In areas outside of sewer service areas, the rules will reflect density based on septic standards consistent with DEP's new nitrate dilution standards. Lastly, the rules will be amended to allow a durational adjustment for sites addressing the growth share obligation. The Council believes that these changes address the commenter's concerns with regard to the Wastewater Management Plan. With regard to the commenter's concerns regarding other natural resources, the Council's general philosophy regarding the exclusion of land for environmental reasons is that the site or portion of the site may be excluded from the vacant land inventory if it is similarly prohibited from all other uses by Federal or state regulations.

N.J.A.C. 5:97-5.2(d)5ii

COMMENT: State and national register historic districts were not addressed in the vacant land analysis. Our municipality has several downtown and Main Street areas designated historically significant. These districts should be removed from the available residential housing stock calculations for the community capacity model.

RESPONSE: COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed, or prepared by the Office of Smart Growth, Department of Agriculture and Department of Environmental Protection. COAH's analysis of vacant land does not include redevelopment of already developed areas, such as downtown business areas or developed historic districts. However, the data does not separately identify historic districts.

N.J.A.C. 5:97-5.2(d)6

COMMENT: Deduction of environmentally constrained lands designated for active recreation and/or green infrastructure uses such as stormwater or wetland mitigation in the Municipal Master Plan that exceed three percent of the municipality's total land area should be permitted. Likewise, the deduction of environmentally constrained passive recreation lands that exceed three percent of the municipality's total acreage that serve these purposes should also be permitted. A rational nexus between the amount of land that can be designated for protection through public acquisition and the unique environmental and topologic characteristics of different areas of the State must be provided. For example, the three percent limitation on passive municipal open space in SDRP - PAs 4, 4B, 5 and 5B, and the Highlands LUCM Conservation or Protection Zones is arbitrary. It may be more appropriate to apply this limitation exclusively in PAs 1, 2 centers and sewer service areas. The rules do not indicate how this provision is to be applied in the Highlands. The commenter acknowledges the three percent limit is set in the Fair Housing Act (N.J.S.A. 52:27D-310.2); nonetheless, this is an antiquated standard since abandoned by the National Recreation Parks Association and other experts in this area in favor of a level of service approach which recognizes that planning for open space and recreational areas requires greater sophistication and sensitivity to local conditions than would be afforded by a simple percentage set-aside. Further, such a myopic approach is completely at odds with the goals of the SDRP, the Highlands Act, and the RMP.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. This criteria is only for municipalities that seek an adjustment to their affordable housing obligation. Furthermore, if the land is already designated as passive or active recreation, these parcels may be removed from the vacant land inventory even if they are over the three percent cap. If additional sites are proposed for designation, these sites may only be excluded from the

vacant land inventory if they are within the three percent caps for active and passive recreation lands respectively, for the whole municipality pursuant to N.J.A.C. 5:97-5.2(d)6 and 7. The municipality then has one year to purchase and limit these lands for active and passive recreation. Although the Council understands the necessity to preserve these lands, the Council is also concerned with the scarcity of land in the state for affordable housing. The Council believes that the percentages are reasonable in the interest of affordable housing. In addition, the percentage for active recreation is consistent with the Balanced Land Use guidelines in the New Jersey Statewide Comprehensive Outdoor Recreation Plan and the percentage for passive recreation is consistent with the Fair Housing Act (N.J.S.A. 52:27D-310.2).

N.J.A.C. 5:97-5.2(d)6i

COMMENT: COAH should consult with the NJDEP Green Acres program and the N.J. Agricultural Development Committee for State restrictions on preserved land. Why ask municipalities to furnish information readily available from sister agencies?

RESPONSE: The Council appreciates the commenter's suggestion. It has been the Council's experience that most of the time the municipality also has this information readily available in its Master Plan. However, the Council will contact the NJDEP Green Acres program and the N.J. Agricultural Development Committee if it has any questions regarding this information.

N.J.A.C. 5:97-5.2(d)6iii

COMMENT: All active agricultural lands should be excluded when determining developable acreage. It is a private commercial enterprise that also serves the citizens of New Jersey by contributing to the state's economy and quality of life.

RESPONSE: The Council's practice with regard to vacant land adjustments remains unchanged from N.J.A.C. 5:93. If there is no restriction on development on the land, there is a possibility that the land could be developed at a future date.

N.J.A.C. 5:97-5.2(d)7

COMMENT: The rule seems to include under "conservation" lands areas identified in municipal master plans as targets for conservation (such as Planning Incentive Grants for farmland preservation?). COAH must work with the NJ Department of Agriculture and the State Agriculture Development Committee on a process for identifying farmland either for preservation or as "developable land."

RESPONSE: Identifying farmland for preservation or as developable land is outside the scope of the Council's current rule proposal. A municipality seeking a vacant land adjustment may remove agricultural lands from its vacant land inventory when the development rights to these lands have been purchased or restricted by covenant. The municipality may remove an additional three percent of land for active recreation and three percent for passive recreation provided the site(s) are purchased and limited to active or passive recreational within one year of substantive certification.

COMMENT: The rule provides that a municipality may seek an adjustment for "conservation, parklands and open space (passive recreation) lands" under specified restrictions. These restrictions are too narrow and appear to be arbitrary.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. As the commenter did not explain further the basis for the contentions, the Council believes the rule is clear and that a clarification is not necessary.

N.J.A.C. 5:97-5.2(d)7i

COMMENT: The rule does not appear to include State or Federal conservation lands. Many municipalities have very large State forests, parks and/or wildlife management areas, and some have large Federal estuary reserves - and many of these State and Federal holdings are growing with new acquisitions. This subsection should be amended to include State and Federal lands.

RESPONSE: Any legally dedicated lands used for conservation may be removed from the vacant land inventory. This would include State and Federal conservation lands.

N.J.A.C. 5:97-5.2(e)

COMMENT: What would be the criteria by which the Council reserves the right to include additional vacant and non-vacant sites that were excluded by the municipality? Without clear criteria, this provision may result in decisions that are arbitrary and capricious. This section could be used as an opportunity for COAH to encourage/require redevelopment or infill before greenfield development.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93 and the Council does not believe the rule needs to be amended. The Council may require the site to be included in the vacant land inventory. However, the municipality is not required to zone these sites for inclusionary development and may address its RDP or adjusted growth share obligation using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6.

N.J.A.C. 5:97-5.2(h)

COMMENT: The rule says that these sites and others have the potential to develop over time and, as such development takes place, the Council has determined that such sites shall contribute toward the housing obligation. Does this period of time that COAH anticipates will provide the potential for development or redevelopment coincide with the Third Round Planning period of 2004 to 2018, or does it extend over a longer period? Any site or area can have the potential for development or redevelopment over a long period of time; however, the expectation for that development to occur within the Third Round planning period is much lower and should not be used to justify the inclusion of improper sites within a municipality's growth share projection.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. The citation the commenter is referring to is how the Council determines the municipality's RDP. Whether the Council assigns an RDP to these types of sites all depends on the specific nature of the property, as well as many other factors, and therefore must be reviewed on a case-by-case basis. When the Council establishes an RDP, the Council assumes that these sites have the potential to develop within the period of substantive certification.

COMMENT: The maximum presumptive set aside of 20 percent is also problematic. If the growth share requirement is one for every four, this creates a 25 percent set-aside. A maximum of 20 percent does not allow the municipality to "catch up" on prior units generated outside the Growth Share system and creates a deficit within the Growth Share system.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. The citation the commenter is referring to is how the Council determines the municipality's RDP on the remaining sites on the vacant land inventory. The rules establish a minimum of six units per acre and a maximum 20 percent set-aside in calculating the RDP. The concept of an RDP is that these are sites that could "potentially develop" if inclusionary zoning were in place. However, the municipality is not required to zone these sites for inclusionary development and may address its RDP using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6.

COMMENT: The rule says that the minimum presumptive density shall be six units per acre and the maximum

presumptive set-aside shall be 20 percent. There are serious flaws with both of these assumptions. The only areas in which lands can support a minimum of six units per acre are those with adequate sewer service and infrastructure. Minimum density in septic areas should be one unit per acre or fewer to allow not only adequate separation distances between septic beds and on-site wells, but to allow for proper nitrate dilution. Most communities with fair to poor soils require densities far less than that to properly accommodate nitrate dilution of onsite septic systems. The Highlands RMP has required minimum lot sizes far in excess of one acre for single-family home development with on-site septic systems. A one-size fits all approach is damaging to the credibility of the rules. COAH should consider a tiered system of minimum presumptive density based on State Planning Area or other similar recognition of not only sewer and water infrastructure, but community character and ground water resource issues.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. The citation the commenter is referring to is how the Council determines the municipality's RDP on the remaining sites on the vacant land inventory. The rules establish a minimum of six units per acre and a maximum 20 percent set-aside in calculating the RDP. The concept of an RDP is that these are sites that could "potentially develop" if inclusionary zoning were in place. However, the municipality is not required to zone these sites for inclusionary development and may address its RDP using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6. However, the Council's rules and projections will be amended in the near future to take into account the adopted DEP Water Quality Management Planning Rules, N.J.A.C. 7:15. In addition, the rules on the growth projection adjustment will be amended to provide different minimum units and jobs per acre based on planning areas, centers, sewer service areas and areas outside of sewer service areas. In areas outside of sewer service areas, the rules will reflect density based on septic standards consistent with DEP's new nitrate dilution standards. Lastly, the rules will be amended to allow a durational adjustment for sites addressing the growth share obligation.

COMMENT: The COAH Second Round rule required consideration of both the character of the area surrounding each site and the need for low and moderate income housing in establishing the density and set-aside of sites in a RDP analysis. Why the backtracking in the proposed rule to delete consideration of "the need to provide housing for low and moderate income households"? See N.J.A.C. 5:93-4.2(f). That consideration should be reinstated, in order to maximize affordable housing production, particularly since "character' is an elusive term in establishing density in a municipality that has been exclusionary.

RESPONSE: This was inadvertently deleted from the rule and will be put back in a rule amendment in the near future.

COMMENT: Vacant lands that lack adequate sewer and/or water capacity and for which sewer and/or water capacity is unlikely to become available prior to 2018 should be excluded from Round Three growth share, provided that adequate documentation (including, but not limited to, a County Waste Water Management Plan or certification from DEP) to support this condition is submitted. These lands could be included in subsequent COAH Rounds if infrastructure becomes available. As an alternative, presumptive densities consistent with the State Department of Environmental Protection's (DEP's) nitrate dilution based septic density standards for areas served by individual on-site septic systems could be applied to these lands. COAH should work with DEP in developing an appropriate definition of "capacity" for inclusion in N.J.A.C. 5:97-1.4.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93, and to amend this now would be unfair to municipalities who already received a vacant land adjustment. The citation the commenter is referring to is how the Council determines the municipality's RDP on the remaining sites on the vacant land inventory. The rules establish a minimum of six units per acre and a maximum 20 percent set-aside in calculating the RDP. The concept of an RDP is that these are sites that could "potentially develop" if inclusionary zoning were in place. However, the municipality is not required to zone these sites for inclusionary development and may address its RDP using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6. However, the Council's rules and projections will be amended in the near future to take into account the adopted DEP Water Quality Management Planning Rules, N.J.A.C. 7:15. In addition, the rules on the growth projection adjustment will be amended to provide

different minimum units and jobs per acre based on planning areas, centers, sewer service areas and areas outside of sewer service areas. In areas outside of sewer service areas, the rules will reflect density based on septic standards consistent with DEP's new nitrate dilution standards. Lastly, the rules will be amended to allow a durational adjustment for sites addressing the growth share obligation.

N.J.A.C. 5:97-5.2(i)

COMMENT: COAH should consider infrastructure capacity limitations for water and sewer service and the implicit assumption that these sites will eventually become available for development.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. The citation the commenter is referring to is how the Council determines the municipality's RDP on the remaining sites on the vacant land inventory. The rules establish a minimum of six units per acre and a maximum 20 percent set-aside in calculating the RDP. The concept of an RDP is that these are sites that could "potentially develop" if inclusionary zoning were in place. However, the municipality is not required to zone these sites for inclusionary development and may address its RDP using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6. However, the Council's rules and projections will be amended in the near future to take into account the adopted DEP Water Quality Management Planning Rules, N.J.A.C. 7:15. In addition, the rules on the growth projection adjustment will be amended to provide different minimum units and jobs per acre based on planning areas, centers, sewer service areas and areas outside of sewer service areas. In areas outside of sewer service areas, the rules will reflect density based on septic standards consistent with DEP's new nitrate dilution standards. Lastly, the rules will be amended to allow a durational adjustment for sites addressing the growth share obligation.

N.J.A.C. 5:97-5.2(k)

COMMENT: The rule should be modified so that reevaluation of the RDP is mandatory, not discretionary if one or more of the listed conditions occur, so as to increase the likelihood of addressed fully the municipality's housing obligation.

RESPONSE: It is not the intent of the Council to review a municipality's previously granted vacant land adjustment, unless the municipality failed to implement the terms of the substantive certification or judgment of compliance. However, during the Council's review of the municipality's petition for substantive certification, the Council will review the municipality's mechanisms to address unmet need and may require the municipality to amend or add additional mechanisms in accordance with N.J.A.C. 5:97-5.3(b).

COMMENT: The deadline for purchasing active and passive recreational lands of "within one year of substantive certification" is too constrained, particularly given the substantial funding/budgetary constraints that exist at the state and local levels, and lack of control that government entities have over when private property owners decide to sell their land.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. Although the Council understands the need to be flexible, the Council believes that in the interest of affordable housing, one year is an adequate timeframe for municipalities to acquire active and passive recreational lands and will prevent sites designated for these purposes from being developed for another use. Municipalities that exclude these lands from its inventory for the purposes of an adjustment to its affordable housing obligation should ensure that the land in question be used for that purpose within a reasonable time frame. Planning for active and passive recreational needs of the municipality should not begin with the response to the housing obligation.

COMMENT: The rule should also be amended to add a fourth circumstance when COAH will reevaluate the RDP, when "land becomes available", a point recognized by the Supreme Court in *Mount Laurel II*, see 92 *N.J.* 158, 248, n.21. Land can become available through redevelopment, fires that destroy development, and demolition of obsolete

structures, etc., to cite several examples.

RESPONSE: It is not the intent of the Council to review a municipality's previously granted vacant land adjustment, unless the municipality failed to implement the terms of the substantive certification or judgment of compliance. However, during the Council's review of the municipality's petition for substantive certification, the Council will review the municipality's mechanisms to address unmet need and may require the municipality to amend or add additional mechanisms in accordance with N.J.A.C. 5:97-5.3(b).

N.J.A.C. 5:97-5.3

COMMENT: The strong emphasis on addressing the unmet need is a welcome addition to COAH rules. The rule would be even clearer and stronger with a statement requiring the municipal housing element and fair share plan to address affirmatively any unmet need.

RESPONSE: Municipalities must provide a response to the unmet need in accordance with N.J.A.C. 5:97-5.3. The Council does, in fact, require meaningful plans for unmet need. Pursuant to N.J.A.C. 5:97-5.3, all components designed to address unmet need as part of a municipality's prior round certification or judgment of compliance must continue in full force and any affordable housing units created will be credited toward unmet need until such time as the municipality has provided for its entire unmet need. Furthermore, the Council intends to conduct a thorough review of vacant land adjustments for all municipalities that did not implement all of the terms of the substantive certification or judgment of compliance.

COMMENT: The concept of unmet need as established by the agency is flawed. If a municipality has insufficient vacant land to support a prior round obligation, there should be a credit against the number assigned to the municipality reflecting the initial error in the assignment. By establishing unmet need, and continually requiring municipalities, in round after round, to justify the inability to satisfy numbers which were too high in the first place, creates an onerous burden. Additionally, the concept that unmet need must be satisfied before housing activities may be counted toward their realistic development potential or growth share will result in municipalities never being able to satisfy their realistic development or growth share obligation.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. The Council does not consider unmet need as a permanent adjustment to municipal affordable housing obligations. There are circumstances where additional affordable housing opportunities can be captured in municipalities that received an adjustment due to lack of land, such as redevelopment or opportunities to create accessory apartments. Municipalities that are seeking a vacant land adjustment for the first time or whose vacant land adjustment was not granted as part of a second round substantive certification or judgment of compliance may still apply credits for built units toward its affordable housing obligation. They are not restricted in that respect. The only difference for this category of municipalities is that these units would be applied toward the total prior round obligation before the RDP is established. All components of a certified Housing Element and Fair Share Plan designed to address unmet need must continue in full force and any affordable housing units created as a result will be credited toward unmet need until such time as the municipality has provided for its entire unmet need. For example, if a municipality adopted an overlay zone, this overlay zoning must be retained. Therefore, if any affordable units are created pursuant to the overlay zone, then these units could count toward the unmet need. Any mechanisms designated to address the growth share obligation will be credited against the growth share obligation.

COMMENT: A realistic approach to unmet need, and the compounding of unmet need through the imposition of growth share obligations in addition to unmet need, is needed. Some municipalities that are fully, or almost fully, developed have a significant unmet need from the first or second rounds. Such unmet need is in many cases unlikely to be addressed in the near future under the current system, and yet the proposed rules impose significant growth share obligations that are even less likely to be addressed. Such an approach will only discourage municipalities from participating in the process and will lead to less affordable housing, not more.

RESPONSE: If the municipality is lacking vacant land to address the projected growth share obligation, then it may apply for a growth projection adjustment.

COMMENT: In adopting the growth share approach, there is no longer any reason for COAH to separately consider remaining unmet need from the prior round (in connection with a prior round vacant land adjustment). The growth share approach requires a municipality to provide affordable housing in response to growth as it occurs. Therefore, a town-wide "growth share ordinance" requiring a 20 percent affordable housing setaside in connection with any development should satisfy the total affordable housing obligation.

RESPONSE: Municipalities are still responsible for any remaining 1987-1999 prior round obligation, in addition to the growth share obligation. A municipality could adopt a town-wide inclusionary zoning ordinance provided it complies with N.J.A.C. 5:97-6.4.

COMMENT: The commenter understands COAH's desire to have all prior round credits applied to the prior round before any credits are carried forward in to the Third Round. A more equitable approach would be to allow the application of credits to the RDP, and then prohibit any credits to be applied to the Third Round but require any excess credits be applied to the unmet need. This would allow to the municipality to remain whole as it approached its Growth Share obligation and would apply any excess credits to the unmet need.

RESPONSE: The Council has decided to change its practice with regard to this issue. The Council believes that if a municipality has not already received a vacant land adjustment, it must apply its credits to the unmet need first and submit a plan to address the RDP. The rule will be amended in the near future to say that if the credit was constructed after June 6, 1999, the municipality may apply the credit to the RDP or unmet need, at the municipality's discretion, provided the credit wasn't a mechanism previously included in the plan to address unmet need. Municipalities may apply credits for units constructed after June 6, 1999, to the growth share obligation provided credits have first been applied to the RDP.

COMMENT: Amend Subsection B to add a reference to manufactured housing/land lease communities.

RESPONSE: The Council appreciates the commenter's suggestion. As mentioned previously, the Council will consider amendments in the future to address the unique concerns of the manufactured housing community.

N.J.A.C. 5:97-5.3(a)

COMMENT: When addressing unmet need, "overlay zoning" is specifically cited as an option that should be retained yet COAH did not accept overlay zoning as a viable strategy for third round Housing Element/Fair Share Plan. Please clarify. Will "overlay zones" designed to produce affordable housing be recognized by COAH as presenting a realistic opportunity?

RESPONSE: The citation the commenter is referring to relates to mechanisms that were used to address a prior round unmet need as part of a certified Housing Element and Fair Share Plan. The Council recognizes that sites where the existing use is still in operation may develop or redevelop over time. In the prior round, the Council did accept overlay zones to address unmet need and will accept them in the future to address unmet need and to capture additional opportunities to accommodate growth and corresponding affordable housing when a growth projection adjustment is granted (see N.J.A.C. 5:97-5.7). N.J.A.C. 5:97-5.3(a) says that all components of a Housing Element and Fair Share Plan designed to address unmet need must continue in full force and any affordable housing units created as a result will be credited toward unmet need until such time as the municipality has provided for its entire unmet need. For example, if a municipality adopted an overlay zone as part of its prior round substantive certification, this overlay zoning must be retained. Therefore, if any affordable units are created pursuant to the overlay zone, then these units would count toward the unmet need. With regard to overlay zones to address other portions of the affordable housing obligation (RDP or growth share obligation), proposed sites must present a realistic opportunity and meet the site suitability criteria in

N.J.A.C. 5:97-3.13. Therefore, if an overlay zone is placed over a zone where the underlying use is still in operation on the site, the Council would not consider this site to present a realistic opportunity or to be a suitable site to address the affordable housing obligation, including a municipality's adjusted growth share obligation or RDP, if applicable, unless there is an agreement with the property owner. However, in this case the Council does not see why the municipality would not just zone the site for affordable housing by right, instead of placing an overlay zone over the area. The Council will generally accept zoning by right where there are existing vacant buildings on the site, provided the site is zoned pursuant to N.J.A.C. 5:97-6.4 and is suitable pursuant to N.J.A.C. 5:97-3.13. In addition, if the site is vacant, the site should be zoned for affordable housing by right, and not by overlay zoning.

COMMENT: The rule proposal indicates that COAH shall review prior efforts to address the unmet need and may require additional mechanisms to address it. Given that COAH granted substantive certification to municipalities with few if any compliance mechanisms to address the unmet need, this review is crucial.

RESPONSE: The Council appreciates the commenter's concern. N.J.A.C. 5:97-5.3(a) now provides more options to address unmet need such as RCAs and affordable units created in redevelopment areas.

COMMENT: The regulations seem to indicate a municipality that received a vacant land adjustment must satisfy unmet need before any affordable development can be counted toward growth share. The requirement has the effect of never allowing a municipality to satisfy a growth share obligation, if it has insufficient available land to satisfy a second round obligation. If a municipality with a vacant land adjustment, and unmet need, provides for growth share units which are then credited to the unmet need, explain how a municipality is expected to satisfy the growth share obligation. It appears the regulations are designed to turn unmet need into a growth share deficiency

RESPONSE: The commenter is incorrect in the applicability of the rule. All components of a Housing Element and Fair Share Plan designed to address unmet need must continue in full force and any affordable housing units created as a result will be credited toward unmet need until such time as the municipality has provided for its entire unmet need. For example, if a municipality adopted an overlay zone as part of its prior round substantive certification, this overlay zoning must be retained. Therefore, if any affordable units are created pursuant to the overlay zone, then these units would count toward the unmet need.

N.J.A.C. 5:97-5.3(b)4

COMMENT: N.J.A.C. 5:97-5.3(b)4 specifies that to satisfy the unmet need for the prior round, COAH may require the establishment of a redevelopment area, overlay zoning, zoning amendments that permit apartments, etc. While zoning overlays and the like are at times utilized to satisfy affordable housing obligations of a municipality, COAH's use of the Local Housing and Redevelopment Law is questionable in light of recent case law. It is suggested that this component of this provision be deleted.

RESPONSE: The Council does not agree with the commenter. The Council is not aware of any recent law cases regarding redevelopment that would affect a municipality's ability from using an overlay zone or redevelopment area to address its affordable housing obligation. The decision to require a municipality to use a redevelopment area or overlay zone to address unmet need or for a potential growth share opportunity depends on the specific nature of the property, as well as many other factors, and, therefore, must be reviewed on a case-by-case basis by the Council.

COMMENT: The requirement that municipalities use redevelopment as a way of meeting their affordable housing obligations is positive, but COAH needs to require that municipalities do more than passively consider redevelopment. COAH should require that every municipality with an unmet need and that every municipality that is requesting a vacant land adjustment meet the very high burden of showing that redevelopment cannot occur in the municipality. Too often, in the past, COAH has on paper considered whether redevelopment is likely to occur and quickly moved past the issue without requiring incentives that would assist with redevelopment. COAH should do more than that in the Third Round and should require that every municipality employ whatever reasonable incentives are necessary to create a

realistic opportunity for affordable housing through redevelopment. COAH should revise N.J.A.C. 5:97-5.2(c)6 and 5.3(b)4 to indicate that municipalities requesting a vacant land adjustment or that have unmet need are required to ensure that redevelopment results in affordable housing.

RESPONSE: The Council does not believe this change is necessary because the Council will review municipal opportunities to address unmet need on a case-by-case basis. The Council encourages the reuse and redevelopment of buildings and land. The rules contain a new section on redevelopment which has been added to capture the unique circumstances surrounding redevelopment that occurs specifically under the auspices of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

COMMENT: The COAH regulations should be amended to acknowledge any grant of a vacant lands adjustment. This should be done as part of their initial allocation of affordable housing obligation. It should not fall to the municipality to perform a vacant land adjustment since this was already done and accepted by COAH when they initially reviewed and accepted a vacant land adjustment. Municipalities with certified second round plans produced fair share plans to address the prior round obligation in conjunction with the vacant land adjustment. This rule changes that number and will require a community to account differently for prior round units that were certified in a second round plan. This increases the obligation.

RESPONSE: If a municipality was previously granted a vacant land adjustment as part of a prior round obligation, the Council will not reevaluate the previously granted vacant land adjustment unless the municipality failed to implement the terms of the substantive certification or judgment of compliance. However, during the Council's review of the municipality's petition for substantive certification, the Council will review the municipality's mechanisms to address unmet need and may require the municipality to amend or add additional mechanisms in accordance with N.J.A.C. 5:97-5.3(b).

N.J.A.C. 5:97-5.3(b)5

COMMENT: In the context of unmet need, any plan to spend revenues collected under a development fee ordinance must indicate how the funds will be used to develop affordable housing, and not for other purposes allowed by COAH rules.

RESPONSE: During the Council's review of the municipality's petition for substantive certification, the Council will review the municipality's mechanisms to address unmet need and may require the municipality to amend or add additional mechanisms in accordance with N.J.A.C. 5:97-5.3(b). COAH will pay particular attention to municipalities who proposed a development fee ordinance to address unmet need and did not spend any development fees for this purpose.

N.J.A.C. 5:97-5.3(b)6

COMMENT: The rule exempts certain unidentified municipalities from the 25 percent age-restricted cap in violation of the Appellate Division's decision finding that the age-restricted cap can be used in ways that results in unlawful exclusion. Please indicate (1) why COAH has included this provision; (2) which of the roughly 50 towns that previously received vacant land adjustments and thus had unmet need are expected to be affected by this regulation; and (3) why COAH has decided it is important to treat certain towns different from others.

RESPONSE: It is unknown how many municipalities that received vacant land adjustments this rule will affect because it is impossible to know how many units which were included in previously certified plan have been constructed or have been approved to date. However, the Council has decided to grandfather these municipalities because they fulfilled the terms of their substantive certification. The Council does not believe this violates the Appellate Division's decision.

N.J.A.C. 5:97-5.3(c)

COMMENT: The Council should delete or carve out rental projects. Bonuses should be given for any development that takes place regardless if it is for the unmet demand.

RESPONSE: Rental bonuses are available to municipalities for the prior round obligation for rental units that meet the affordable housing rental requirement. Once municipalities exceed the rental requirement, bonuses are not available under the prior round rules. A municipality wishing to receive additional rental bonuses based upon the production of additional rental units could ask the Council to recalculate its realistic development potential (RDP) and qualify for additional rental bonuses based upon a new rental obligation. The commenter should note that in the third round, the Council has changed its policy to permit rental bonuses once the minimum rental requirement has been addressed.

COMMENT: Please provide a clarification regarding this sentence: "No bonuses shall be provided for mechanisms used to address unmet need." Please also provide an example of how this regulation will be implemented.

RESPONSE: No municipality shall receive a bonus for any unit (for example, a bonus for a rental unit) that is used to address the municipality's unmet need.

N.J.A.C. 5:97-5.4

COMMENT: COAH should require the use of affordable sites with sewer prior to approving affordable housing sites that require the extension of sewer. However, if it approves an affordable housing site that is not yet served by sewer, it must require zoning that provides an incentive for the private developer to bring sewer to the site.

RESPONSE: N.J.A.C. 5:97-3.13(b)1 states that sites that are located in Planning Areas 1 or 2 or located within a designated center or located in an existing sewer service area are the preferred location for municipalities to address their fair share obligation. However, the Council recognizes that an extension to a sewer service area is not possible for some locations of the State. In these cases, septic systems may be possible in accordance with DEP's regulations. The Council's rules will be amended in the near future to provide presumptive densities for inclusionary developments based on planning area and sewer service area. In addition, DEP has granted more than 100 permits for small and innovative technology wastewater treatment plants and is actively working with the Pinelands Commission to test the use of individual innovative septic treatment units on one-acre residential parcels. Where there is currently no sewer or septic possibilities, the rules will be amended to allow a durational adjustment for sites addressing the growth share obligation. In the case of a durational adjustment, the Council will still require the site(s) to be zoned for inclusionary development pursuant to N.J.A.C. 5:97-6.4. However, the commenter should note that municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, a market-to-affordable program or reconstruction programs.

COMMENT: The rules as currently constructed simply obligate a municipality to "endorse all applications to provide infrastructure to a site for the development of low and moderate income housing for identified in the Fair Share Plan" without consideration of limitation in capacity or environmental constraints as allowed for in the Fair Housing Act and as required by other applicable State statutes. New Jersey's surface and ground waters are a finite resource that belong to each and every resident, held in trust and managed by the State of New Jersey. One of the regulatory tools that the NJDEP utilizes to assure that both current decision making and future planning adequately take into account protection of water quality and quantity is the Water Quality Management Planning rules, N.J.A.C. 7:15. The WQMP rules are intended to evaluate whether appropriate and adequate wastewater treatment capacity is available to accommodate the needs of existing and future development in consideration of environmental constraints. Under the existing rules, NJDEP requires that to obtain approval an applicant must first conduct "an environmental constraints analysis (ECA) . . . to account for the constraints to development that arise because of the presence of environmentally sensitive areas and the need to protect them. The ECA is needed to assess the proposed sizing of the treatment facilities and the appropriate location and extent of the proposed sewer service areas." The requirements in these rules is very

similar to the criteria that should be used by COAH to address the requirements for site suitability, or development suitability and Realistic Development Potential under N.J.A.C. 5:97-3.13 and 5.2, respectively. The rules should include a requirement that "an endorsement of any application for water and wastewater capacity shall be in accordance with applicable law" similar to the provisions in the proposed rules pertaining to Realistic Development Potential.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. The Council does not believe this change is necessary because the Council is not aware of any difficulties with this issue in the past. The municipality must follow proper procedures for endorsing applications to the DEP or its agent to provide water and/or sewer capacity for an affordable housing development.

COMMENT: This section continues to allow for a durational adjustment for lack of necessary infrastructure. The provision requires, however, that the site be zoned for inclusionary development, or if the site had earlier been zoned, that the zoning continue in effect. These provisions are contrary to the holding of the Appellate Division in review of the 2004 Growth Share regulations. The Court specifically held that the assignment of growth where there is no water or sewer capacity does not create a realistic opportunity. Therefore, if there is no adequate water or sewer capacity, there can be no realistic opportunity for affordable housing on a site, and COAH should cease efforts to require zoning for inclusionary development on those sites. COAH should rely upon its monitoring provisions, instead of the imposition of zoning which is improper.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93 and was not challenged in *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95*. Providing affordable housing has been an ongoing constitutional obligation since the *Mount Laurel* decisions and the enactment of the FHA of 1985. The Council expects municipalities to do everything within their control to provide infrastructure to proposed affordable housing sites. Certainly, municipalities will be expected to reserve sewer and water capacity for low and moderate income housing where sewer and water is a scarce resource. Municipalities will be expected to support all necessary applications to the DEP or its agent to provide water and/or sewer capacity.

N.J.A.C. 5:97-5.4(e)

COMMENT: If a town has insufficient capacity for increased growth, there must be greater flexibility than that which is provided in this policy. There is no encouragement of redevelopment, rehabilitation, or filtering. This policy is a prime example of what will happen when the entire State reaches full build-out. There is no plan for the future beyond maximum growth capacity. Now is the time to pro-actively anticipate this situation and encourage flexibility in meeting the targets presented in Appendix F by encouraging redevelopment and rehabilitation.

RESPONSE: The Council encourages reuse and redevelopment of existing buildings and land; however, Council does not dictate how a municipality must address its affordable housing obligation. Municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, a market-to-affordable programs or reconstruction programs. The rules also contain a new section on redevelopment has been added to capture the unique circumstances surrounding redevelopment that occurs specifically under the auspices of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

N.J.A.C. 5:97-5.4(f)

COMMENT: DEP's incessant delays in processing and approving Wastewater Management Plan (WMP) amendments to place affordable housing parcels in "sewer service areas" is one of the greatest impediments to the prompt production of affordable housing. The proposed rule should be supplemented to authorize COAH to intervene and interact with DEP to speed up the process.

RESPONSE: The Council has been working closely with DEP on issues related to wastewater management plans, site suitability and permit reviews for affordable housing developments. The Council will continue to strive for

interagency cooperation in assisting the municipality and developers to move the affordable housing development forward expeditiously. The Council can act as an advocate with other State agencies, including DEP and DOT. However, the Council has no statutory control over the regulations and procedures of other state agencies. Therefore, any comments relating to DEP's Water Quality Management Planning Rule amendments are outside the scope of the Council's jurisdiction.

N.J.A.C. 5:97-5.4(h)1

COMMENT: Municipalities that are served by regional sewer or water providers and are not subject to contractual capacity allocations may not have the authority or administrative mechanisms to reserve new water and sewer capacity for COAH sites. Furthermore, it may be more appropriate to give sites with environmental and health problems or critical public facilities such as schools or hospitals higher priority access to sewer and water than COAH sites when sewer and water capacity is limited.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. Providing affordable housing has been an ongoing constitutional obligation since the *Mount Laurel* decisions and the enactment of the FHA of 1985. The Council expects municipalities to do everything within their control to provide infrastructure to proposed affordable housing sites. Certainly, municipalities will be expected to reserve sewer and water capacity for low and moderate income housing where sewer and water is a scarce resource. Municipalities will be expected to support all necessary applications to the DEP or its agent to provide water and/or sewer capacity.

N.J.A.C. 5:97-5.4(h)2

COMMENT: The regulation should be amended to require municipalities to "promptly" endorse all applications to DEP and "otherwise fully cooperate" in efforts to secure sewer and water capacity. There have been many instances in the past where municipalities have delayed in their endorsements and have otherwise failed to supply the requested information, data and mapping which has in turn delayed the issuance of DEP approvals and permits.

RESPONSE: The rule states that "Municipalities shall endorse all applications to the DEP or its agent to provide water and/or sewer capacity. Such endorsements shall be simultaneously submitted to the Council." The Council's intent is that municipalities promptly endorse such applications and fully cooperate with DEP and the Council does not believe a clarification is necessary.

N.J.A.C. 5:97-5.4(h)4

COMMENT: The rule requires a municipality to amend its housing element and fair share plan based on the availability of sewer. The last sentence in the rule provides for the possibility of a waiver. COAH should eliminate the language for a waiver from this rule. COAH has created standards for a waiver at N.J.A.C. 5:96-15. There is no reason to address the waiver in this rule.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93 and the Council does not believe this change is warranted because there is no negative impact to maintaining the waiver language regarding the durational adjustment in this section of the rule, in addition to the standards for a waiver in N.J.A.C. 5:96-15.

N.J.A.C. 5:97-5.5

COMMENT: Similar to the 20 percent cap for prior round affordable housing established by COAH pursuant to N.J.A.C. 5:97-5.5, COAH should have a 20 percent cap for growth share calculations. COAH's methodology, unless adjusted, would unrealistically require roughly 36 percent of the new homes to be constructed during 2004 through 2018 to be affordable. In accordance with the proposed third round rules, the commenter calculated the preliminary

growth share for Oldmans Township, which estimated a preliminary residential growth share of 44 units and a non-residential growth share of 381 units. Therefore, the total growth share obligation is 425 units. The 425-unit growth share obligation plus the 133-unit prior cycle obligation yields a cumulative Cycle I/II/III obligation of 558 units. Under the previous third round rules, the Township's cumulative Cycle I/II/III obligation was 183 units. Therefore, the Township's cumulative obligation is estimated to increase by 375 units. A total of 1,004 residential units are projected to exist within the Township by December 31, 2018. Out of the total 1,004 existing and anticipated housing units in the Township, 558 housing units would be affordable. This represents a Township-wide affordable housing set-aside of 35.7 percent, as calculated below. Additionally, this represents an increase in the total number of residential units within the Township of 55.6 percent.

Township-wide percentage of affordable units: 1,004 + 558 = 1,562

558/1,562 = 35.7 percent affordable units

Increase in total residential units: 558/1,004 = 55.6 percent increase in total residential units

The Township-wide affordable housing set-aside of 35.7 percent imposes a hardship upon the Township and runs contrary to the tenets of COAH's 20 percent Cap methodology. Although the 20 percent cap methodology only applies to the prior cycle obligation, the underlying principles of this methodology are applicable here. N.J.A.C. 5:97-5.5 states the following with regard to the 20 percent cap: ". . .This is based on the premise that if affordable housing was provided as a 20-percent set-aside of inclusionary housing, and if the planned affordable housing was more than 20 percent of (the) units then the new affordable housing and accompanying market units would exceed the number of existing housing units in the community." Applying the above referenced methodology, if the total of projected residential units projected to be constructed by December 31, 2018 is 1,004 units, then the 20 percent cap would limit the affordable housing obligation to 200.8 units, as calculated below.

1,004 x 0.2 = 200.8 units

Therefore, the if the Township were to construct more that 200.8 affordable housing units the number of affordable units in the Township would exceed the 20 percent set-aside and the number of accompanying market rate units would exceed the total number of units within the Township, which would violate the 20 percent cap methodology. In fact, if the cumulative obligation of 558 affordable units represented a true 20 percent set-aside within the Township, then a total of 2,790 residential units would be expected to be constructed, as calculated below.

558/0.2 = 2,790 total units

However, this is not the case, as only 1,004 residential units are anticipated to be constructed by December 31, 2018. Based upon the information presented above, it does not seem likely that COAH and its consultants intended the proposed regulations to result in such a hardship, as this runs contrary to the underlying principles of COAH's 20 percent cap methodology. Therefore, COAH should permit municipalities to apply for a 20 percent cap on their cumulative Cycle I/II/III affordable housing obligation. This provision would prevent this type of hardship from occurring.

RESPONSE: Proposed N.J.A.C. 5:97-5.5 carries forward the cap for the prior round obligation of 20 percent of the occupied housing stock (community capacity at the time the municipality requests the 20 percent cap for the first time). Pursuant to N.J.A.C. 5:97-5.6, a municipality may also request an adjustment to its household and employment projections based on an analysis of existing land capacity.

N.J.A.C. 5:97-5.5(a)

COMMENT: Using average house-holding figures provided in the 2007 released version of U.S. Census Bureau Estimates, and the ECONSULT Corporation Study of January 2008, Cranbury has approximately 1,477 households

resulting in a community capacity 295 COAH units as calculated by this section. Subtracting credits earned through Round Two of 176 units leaves a remaining maximum community capacity of 119 units. The Round Three calculation of 496 units would result in Cranbury Township exceeding community capacity by 128 percent. If the COAH obligation remains as calculated by Round Three rules for job creation, the resultant percentage of COAH units to total available housing stock would be 34 percent. An adjustment under the 20 percent cap rule should be given to Cranbury Township based upon the Community Capacity Model.

RESPONSE: The 20 percent cap may only be applied to the prior round obligation. However, the municipality may apply for a growth projection adjustment pursuant to N.J.A.C. 5:97-5.6.

COMMENT: The regulation is contrary to the "drastic alteration doctrine" in *Mount Laurel II* and makes no sense as currently worded. A municipality should lose entitlement to the 20 percent cap if it experiences dramatic growth during the housing cycle in question and more than doubles its market-rate housing stock. COAH's clear intent with the 20 percent cap was to defer the housing obligation, not "wipe it off the books." If the 1987-1999 housing obligation is now much less than 20 percent of the number of housing units in a community, the municipality should now be required to address the deferred housing obligation.

RESPONSE: The 20 percent cap was developed in response to the FHA mandate (N.J.S.A. 52:27D-307(2)b), which specifies that the established pattern of development in the community cannot be drastically altered and was originally established by rule in N.J.A.C. 5:93. This rule has been challenged and upheld by the judicial system. The Council believes that changing the rule now would cause an undue burden to the few municipalities who relied on the 20 percent cap as part of their prior round substantive certification. In addition, the Council believes keeping the rule as is for those municipalities that previously received a 20 percent cap would have a minor impact because so few municipalities received this adjustment as part of their substantive certification.

N.J.A.C. 5:97-5.6

COMMENT: The provisions for adjustment of household and employment growth projections are unnecessarily complex, and are not clear and understandable, partially because it relies upon too many cross-references for description. Simply stated, since the consultants arrived at growth projections for municipalities through extrapolation of numbers from 2002 and earlier, municipalities should be able to seek an adjustment to the growth projections based on actual growth that occurs from January 1, 2004 forward. Municipalities should be able to seek adjustments to the projections based upon a fall off of the market, reaching of build-out, application of regional and regulatory controls, and any number of factors that impact growth. The proposed provisions are too rigid and complicated.

RESPONSE: The growth projection adjustment requires much of the same information as a vacant land adjustment. The information required in order to determine whether a growth projection adjustment is warranted are items easily retained by the municipality, such as tax maps, master plans, and inventories of vacant land. However, the Council is planning on having seminars once the rules are adopted, which will deal with the adjustment process, in addition to providing a worksheet to assist municipalities with the adjustment process. *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007), the New Jersey Appellate Division stated that, "If municipalities with substantial amounts of vacant land and access to infrastructure can decide for themselves whether and how much to grow, it is highly likely that housing opportunity will fall far short of identified housing need." *Id.* at 56. With this, the Court placed two limitations on the previous growth share approach taken by the Council which relied on municipally derived projections: the growth share methodology must contain a sufficient check on municipal discretion in adopting a master plan and zoning ordinance; and the growth share methodology must be based on data from which it can reasonably be concluded that the allocation formula will result in satisfaction of the Statewide and regional needs. In order to respond to the Court's concerns, the Council determined that an adjustment to these projections should only be warranted by lack of available land capacity and not by factors that are within the municipality's control, a process similar although not identical to the vacant land adjustment process. Like the vacant land adjustment process, the Council believes that uniform minimum dwelling units

and jobs per acre is a reasonable approach. The growth projection adjustment process was intentionally designed to create predictability for all parties, as with the vacant land adjustment. It is important to note that the revised growth share approach relies in part on independent household and employment growth projections, which each municipality will utilize in its long range planning for affordable housing. Municipalities are required to construct or otherwise provide affordable housing in proportion with actual residential and non-residential development. In addition, Council's rules provide flexibility in addressing the affordable housing obligation by providing an option for municipalities to phase certain components of its plan based on feasibility of the proposed mechanisms. In this case, a detailed implementation schedule is required, which includes deadlines for submission of documentation to the Council.

COMMENT: If a municipality applies for and receives a household and employment growth projection adjustment, what happens to the reduced amount of the projected household and employment growth? Is it reallocated to other municipalities? Is there a point at which, if the adjustments reach a certain threshold, COAH will recalculate the obligations?

RESPONSE: N.J.A.C. 5:97-5.7 requires a municipality that received a growth projection adjustment to evaluate the existing municipal land use map and inventory for areas that may develop or redevelop to identify additional opportunities to accommodate growth and corresponding affordable housing. The purpose of this rule is to capture additional affordable housing opportunities above the adjusted growth share obligation.

COMMENT: When land is a scarce resource, it must be used efficiently. COAH should require a minimum density of at least six units per acre when a municipality zones for affordable housing. COAH should examine abandoned or underutilized developed sites carefully and require municipalities to rezone these sites in a manner that stimulates redevelopment. In many suburban locations, rather than considering densities that are similar to what surrounds the site, COAH should consider if the site is appropriate for a four-story housing product that can be constructed at 25 units to an acre or more.

RESPONSE: Municipalities that are using inclusionary zoning to address their RDP or unmet need must zone in accordance with N.J.A.C. 5:97-6.4. The rules will be amended in the near future to include minimum densities for inclusionary zoning.

COMMENT: The rule proposal establishes a procedure for determining how much of the 1999-2018 housing obligation can be addressed with vacant land. The new procedure does not use the concepts of realistic development potential and "unmet need" that have been incorporated in N.J.A.C. 5:93-4.2. Let us suppose that a municipality has a projected growth share of 400 affordable units and an adjusted growth share of 150 affordable units. In this scenario, the municipality must adopt a plan to address the remaining 250 affordable housing units. COAH must develop standards outlining the requirements of this plan.

RESPONSE: N.J.A.C. 5:97-5.7 requires a municipality that received a growth projection adjustment to evaluate the existing municipal land use map and inventory for areas that may develop or redevelop to identify additional opportunities to accommodate growth and corresponding affordable housing. The purpose of this rule is to capture additional affordable housing opportunities above the adjusted growth share obligation. If the municipality does have a site that may be suitable for redevelopment, the Council may require the municipality to capture affordable housing there. The Council believes that this addresses the commenter's concerns.

COMMENT: Please provide examples of how this regulation works. If a municipality was determined to have 100 vacant acres, but is found after analysis under N.J.A.C. 5:97-5.6 to have only 50 vacant acres, will that municipality's projected obligation be reduced by half?

RESPONSE: N.J.A.C. 5:97-5.6(f) provides an example of a growth projection adjustment. The projected obligation would not be reduced by exactly half.

COMMENT: If a town has not received a response to its request for a pre-petition review of growth projections by

the time its plan is due under N.J.A.C. 5:95-16.2, is it still required to submit its plan to remain under the jurisdiction of COAH?

RESPONSE: The rule will be amended in the near future to delete this provision in N.J.A.C. 5:97-5.6(a) allowing for a pre-petition of a growth projection adjustment.

COMMENT: Explain, in simple terms, how an adjustment under N.J.A.C. 5:97-5.6 would work in a municipality where COAH has already determined there is no vacant land, and there has been no growth in jobs or residential units.

RESPONSE: If the municipality was previously granted or is requesting a vacant land adjustment, the sites utilized to determine the RDP would be excluded from the inventory. However, there may be other sites that have the potential to add growth to the municipality, such as sites that were previously excluded from contributing to the RDP because they may be zoned for non-residential development. If the municipality does not have any of these particular types of sites, their growth share projections may be reduced to zero. However, if any actual growth does occur, the municipality will be responsible for addressing its actual growth share obligation pursuant to N.J.A.C. 5:97-2.5(d). In addition, the municipality that requests an adjustment to household and employment growth projections must evaluate the existing municipal land use map and inventory for areas that may develop or redevelop to identify additional opportunities to accommodate growth and corresponding affordable housing pursuant to N.J.A.C. 5:97-5.7.

COMMENT: If the capacity for an adjustment of household and employment growth projections exists in these regulations, why does N.J.A.C. 5:97-2.2(d) state "Alternatively, a municipality may utilize its own growth projections to calculate growth . . . provided the municipal projections exceed the projections in appendix F." Is this an attempt at providing conflicting guidance within regulations?

RESPONSE: The municipality has the choice of three options: (1) use the projections provided in Appendix F; (2) utilize its own growth projections to calculate growth provided the municipal projections exceed the projections in Appendix F; or (3) request an adjustment to the household and employment projections provided in Appendix F provided the result of the adjustment is less than the growth projections shown in Appendix F by greater than 10 percent.

COMMENT: Please advise if COAH will conduct the analysis provided for by N.J.A.C. 5:97-5.6 for towns that are under a court's jurisdiction.

RESPONSE: If requested by the Court, the Council will conduct the analysis for a municipality that is under a court's jurisdiction. However, it has not been the practice of the courts to request the Council to perform the adjustment in the past. Usually it is the court master that performs the vacant land analysis and provides the recommendation to the Court.

COMMENT: COAH projects an increase of 1,961 housing units, and 5,695 jobs. These figures would require 748 new affordable housing units. This number is likely to decrease sharply with the 2010 census. This is inconsistent with COAH's projection. Satisfying Parsippany-Troy Hills' obligation for the Third Round would require 298 acres of land, based on COAH's minimum presumptive density of six dwelling units per acre. Tracts ranging from eight to 40 acres are necessary to accomplish the zoned areas per COAH's target projections. However, given the developed nature of Parsippany-Troy Hills, finding developable sites with these characteristics is limited. The review presented above indicates that COAH's projections should be re-evaluated by allowing Parsippany Troy-Hills to review the background information used to generate the figures.

RESPONSE: The rule includes provisions at N.J.A.C. 5:97-5.6 that allows municipalities to seek an adjustment to household and employment projections utilized to project the municipal growth share obligation, based on an analysis of existing land capacity. The commenter does not explain the assumption that the delivery of affordable units would be limited to tracts ranging in size from eight to 40 acres. Even at a modest density of five units per acre, a one-acre tract could result in the production of one affordable unit.

COMMENT: The proposed rules should be clarified to specify that when COAH reviews the results of the Highlands Regional Master Plan, as required by the Highlands Act, that household and employment and growth projections should be adjusted based upon this information so that the municipal ability to maintain substantive certification is not compromised.

RESPONSE: The Highlands Regional Master Plan has not been adopted as of the date of this publication. The Council will consider its impact once the Master Plan is adopted by the Highlands Council.

COMMENT: The commenter recommends that the burden and expense of correcting housing and employment projections to accurately determine growth share obligations should be assumed by COAH not the municipalities.

RESPONSE: The growth projection adjustment requires much of the same information as a vacant land adjustment. The information required in order to determine whether a growth projection adjustment is warranted are items more easily retained by the municipality, such as tax maps, master plans, and inventories of vacant land. However, the Council is planning on holding seminars once the rules are adopted, which will deal with the adjustment process, in addition to providing a worksheet to assist municipalities with the adjustment process.

COMMENT: If COAH does not reallocate the unallocated need created by household and employment growth projection adjustments to other municipalities, it will violate the Appellate Division's decision, which required COAH to ensure that there is "sufficient vacant developable land within growth areas to enable the ratios to generate enough housing to meet the need" and stated that "[a] significant mismatch between need and remaining vacant developable land would require COAH to either change the growth share ratio or to devise a different method for allocating the need." *In re N.J.A.C. 5:94*, 390 *N.J. Super.* at 54-55. If COAH permits household and employment growth projection adjustments to reduce the required minimum obligations of municipalities and does not reallocate the obligations, it will create the significant mismatch between need and remaining vacant developable land that the Appellate Division found to be unacceptable. If COAH does not reallocate the unallocated need created by household and employment growth projection adjustments to other municipalities, please explain how it expects to comply with the Appellate Division's decision.

RESPONSE: N.J.A.C. 5:97-5.7 requires a municipality that received a growth projection adjustment to evaluate the existing municipal land use map and inventory for areas that may develop or redevelop to identify additional opportunities to accommodate growth and corresponding affordable housing. The purpose of this rule is to capture additional affordable housing opportunities above the adjusted growth share obligation. If the municipality does have a site that may be suitable for redevelopment, the Council may require the municipality to capture affordable housing there. The Council believes that this addresses the commenter's concerns.

N.J.A.C. 5:97-5.6(a)

COMMENT: COAH cannot make decisions on vacant land capacity prior to parties filing objections with COAH. To do so violates New Jersey's Fair Housing Act and fundamental principles of due process.

RESPONSE: The rule will be amended in the near future to delete this provision.

COMMENT: The procedural regulations are silent on how a pre-petition request is to be filed and how the review is supposed to be conducted. Please state how this request and review is filed and processed. Does it require a motion, with notice to the service list? Is the decision formally made by the COAH Board? What sort of due process will be provided to potential objectors? Will COAH staff have to visit every site in each town to confirm the town's claimed status of the site?

RESPONSE: The rule will be amended in the near future to delete this provision.

COMMENT: The pre-petition review of growth projections appears likely to delay COAH's processing of petitions for substantive certification because it is a fact-sensitive process and because municipalities throughout the state have an incentive to delay providing affordable housing by disputing their growth projections. Also, COAH has not in recent years proven itself capable of moving quickly (with just four petitions for substantive certification granted in a two-year period). How will COAH ensure that the process for requesting household and employment growth projection adjustments provided for in N.J.A.C. 5:97-5.6(a) does not result in lengthy delays?

RESPONSE: The Council is mindful of its duties and responsibilities under the proposed rules and the FHA, and to that end the Council is in the process of expanding its full-time staff to help review and process petitions for substantive certification and conduct ongoing monitoring expeditiously. The Council is planning on having seminars once the rules are adopted, which will deal with the adjustment process, in addition to providing a worksheet to assist municipalities with the adjustment process.

N.J.A.C. 5:97-5.6(b)

COMMENT: Municipalities must be able to seek an adjustment based on lack of vacant land or sewer or water supply irrespective of the growth that has occurred since January 1, 2004. Many municipalities approved development applications prior to COAH's initial adoption of the third round rules in 2004. Under the MLUL both residential and non-residential developments have vested rights, and cannot now be required to provide affordable units to meet the growth share obligation that COAH retroactively attributes to those developments. Many municipalities have exhausted their vacant land capacity, and simply cannot adopt land use ordinances that would meet the growth share attributable to these prior developments with vested rights. Because of COAH's inexplicable and inexcusable failure to have third round regulations in place prior to the expiration of the second round regulations, municipalities had no standards between 1999 and December 20, 2004, that would enable them to plan to accommodate their third round obligation. Even if they spend down their trust fund accounts and zone all remaining vacant land for affordable housing, it is unlikely that enough affordable units could be created to meet the third round obligation. The problem is exacerbated by COAH retroactively increasing the third round growth share obligation attributable to second round inclusionary developments that did not provide a 15 percent or 20 percent on-site affordable housing obligation.

RESPONSE: The Council believes that the commenter's suggestion would be inconsistent with the growth share methodology developed by the Council. The rule will be amended at a future date to provide for a bonus for affordable units that received municipal approvals (preliminary or final approvals) or were included in a redeveloper's agreement between December 20, 2004 and June 2, 2008. The units had to have been proposed to address a municipality's growth share obligation in a third round Housing Element and Fair Share Plan that was included in a municipal petition for third round substantive certification between December 20, 2004 and January 25, 2007.

N.J.A.C. 5:97-5.6(c)

COMMENT: There are over 50 COAH towns with approved vacant land adjustments and certainly many more that are under court jurisdiction. Of the 50 COAH towns, in addition to whatever collective RDP of the towns, the towns together have an unmet prior round need of approximately 5,000 units. They have been assigned a projected non-residential growth share of approximately 2,700 units and a residential growth share of approximately 2,600 units. This means that COAH has assigned 10,300 units assigned to 50 municipalities that will be arguing that those units cannot be developed in their towns because of a lack of vacant land. Even if the 5,000 units from the prior round remain as unmet need that may be developed at some later point, there will be at least 5,300 units that municipalities will argue should they are entitled to a household and employment growth projection adjustment under N.J.A.C. 5:97-5.6. If successful, this would result in an unconstitutional dilution and in unconstitutional "mismatch between need and remaining vacant developable land," *In re N.J.A.C. 5:94*, 390 *N.J. Super.* at 54-55.

RESPONSE: The commenter is incorrect in stating that there will be any dilution of the affordable housing obligation of a municipality with a vacant land adjustment. As noted in the Court's decision, COAH has committed to

continuing the requirement that a municipality with a vacant land adjustment must keep mechanisms in place to fulfill their unmet affordable housing obligation. As noted in response to other comments in this document, there are various other mechanisms available to aid a municipality in meeting their affordable housing obligation (market-to-affordable, accessory apartments, 100 percent municipal construction, etc.). Additionally, the Council intends to adopt amendments to its rules in the near future to provide presumptive densities for inclusionary developments based on planning area and sewer service area to ensure a realistic opportunity for affordable housing. Further, the Council decided to adopt a uniform model that allocated housing need to all communities to ensure that every municipality would plan or zone to address their fair share of affordable housing. The commenter should also be aware that the Council will adopt amendments in the near future that will decrease the number of units that were allocated to vacant land communities.

COMMENT: This will result in a substantial dilution of the projected Third Round obligations because the vacant land analyses that were conducted were supposed to assign an RDP to all developable parcels in the town. If the RDP analysis was accurate, all of the vacant land that formed the basis of that RDP in all likelihood will be the same exact land that formed the basis of COAH's projections. Any town with a vacant land adjustment is thus likely to have no, or a very low, projected Third Round affordable housing obligation. It appears that the only ways for the Third Round affordable housing obligation to remain in towns with a vacant land adjustment is if COAH conducts a more demanding RDP analysis or COAH gives teeth to the requirement that redevelopment occur. Even that, however, is questionable because redevelopment potential was supposed to be part of any RDP analysis conducted by COAH. COAH should state how it plans to analyze available land in the Third Round under N.J.A.C. 5:97-5.6(c) for towns that are requesting or have received vacant land adjustments to ensure an unconstitutional dilution of affordable housing obligations does not occur.

RESPONSE: Opportunities to capture affordable housing may have developed since the municipality's Housing Element and Fair Share Plan was certified. These sites will be reviewed on a case-by-case basis by the Council. In addition, there may be other parcels that were not assigned an RDP in the prior round because they were too small to accommodate five dwelling units. With the growth projection adjustment, these smaller parcels may not be removed from the vacant land inventory because market-rate single lot development may still take place on those sites, therefore adding to the municipality's growth share obligation.

COMMENT: Every town in New Jersey has substantial redevelopment potential assuming the zoning and other incentives are sufficient, thus suggesting that the N.J.A.C. 5:97-5.6 adjustment process may be futile if COAH were to really require that redevelopment be a serious part of a fair share plan. Please state what standards and assumptions will guide the inquiry into the opportunity for redevelopment in a municipality.

RESPONSE: The Council does not believe that criteria are necessary for identifying sites that may be viable for adaptive reuse or redevelopment activity. This depends on the specific nature of the property, as well as many other factors, and therefore must be reviewed on a case-by-case basis. However, N.J.A.C. 5:97-4.2(d) provides some examples of likely sites for redevelopment that may be included in the vacant land inventory that will contribute to the calculation of the RDP. These include sites that are devoted to a specific use which involves relatively low-density development which could create an opportunity for affordable housing if inclusionary zoning was in place. Such sites include, but are not limited to: golf courses not owned by its members; farms in SDRP planning areas one, two and three; driving ranges; nurseries; and nonconforming uses.

COMMENT: This provision appears to be inconsistent with the Fair Housing Act, which states at N.J.S.A. 52:27D-310.1, "When computing a municipal adjustment regarding available land resources as part of the determination of a municipality's fair share of affordable housing, the Council on Affordable Housing shall exclude from designating as vacant land . . . any vacant contiguous parcels of land in private ownership of a size which would accommodate fewer than five housing units if current standards of the council were applied pertaining to housing density."

RESPONSE: The Council does not believe this provision of its rules is inconsistent with the FHA. The Council believes that the commenter's suggestion would be inconsistent with the growth share methodology developed by the

Council. The purpose of a growth projection adjustment is to adjust the total amount of market residential and non-residential growth that can be accommodated in the municipality based upon lack of vacant land. A market rate infill unit could therefore still be developed on a small lot, which will add to the municipality's growth share obligation. However, the rule will be amended in the near future to make clear that municipalities may exclude from the inventory sites that cannot accommodate one housing unit.

N.J.A.C. 5:97-5.6(e)

COMMENT: In considering a request for an adjustment of COAH's growth projections, COAH should take into consideration in its analysis of the vacant land inventory, the current zoning, SDRP planning area designation, the availability of infrastructure, and development constraints, rather than setting a presumptive "one size fits all" minimum density of six units per acre and 45 jobs per acre. The presumptive minimum density assumes that all municipalities are capable of the same level of growth. A municipal build-out analysis based on current zoning, availability of infrastructure and regulated environmental constraints is the most accurate measure of future growth. COAH's monitoring of actual development (on a parcel by parcel basis compared to the estimated build out) would ensure that the fair share obligation is based on actual growth, not an arbitrary projection based on unrealistic assumptions. These densities may be suitable for sites situated in Planning Areas 1 and 2. However, the formula is unrealistic for sites in Planning Areas 4B and 5 that are serviced by individual well and septic systems. The vacant land adjustment rules should recognize the development constraints resulting from environmental and infrastructure considerations and create a realistic Rural Residential Development Potential (RRDP) standard of 0.5 units/acre for sites situated is Planning Areas 4B and 5 that are serviced by individual wells and septic systems.

RESPONSE: The Council's rules and projections will be amended in the near future to take into account the adopted DEP Water Quality Management Planning Rules, N.J.A.C. 7:15. In addition, the rules on the growth projection adjustment will be amended to provide different minimum units and jobs per acre based on planning areas, centers, sewer service areas and areas outside of sewer service areas. In areas outside of sewer service areas, the rules will reflect density based on septic standards consistent with DEP's new nitrate dilution standards.

COMMENT: The rules says that "all sites not considered suitable for residential development shall be considered suitable for non-residential development." It would be the municipality's contention that sites not suitable for development are not suitable for development; without regard to whether the sites are residential or non-residential. Does this COAH policy entirely ignore a municipality's current zoning? Are residentially zoned properties to be considered potential non-residential development sites? This flies in the face of the presumption of validity afforded to local ordinances and would necessitate more judicial intervention as in non-conforming land use cases.

RESPONSE: The Council will amend its rule in the near future to state that the Council will utilize the municipality's zoning to determine whether to assign the residential or non-residential density to each site remaining in the vacant land inventory.

COMMENT: Proposed N.J.A.C. 5:97-5.6(e) describes the process for the adjustment of household and employment growth projections. The proposed rule specifies that "The Council shall also rely on the appropriate regulating agency's regulations regarding development capacity of the site, including the density." The rule should be clarified to include the RMP to address the Highlands Act requirement to consider the RMP for all 88 Highlands municipalities.

RESPONSE: The Highlands Regional Master Plan has not been adopted as of the date of this publication. The Council will consider its impact once the Master Plan is adopted by the Highlands Council.

COMMENT: The minimum presumptive density of six units per acre doesn't make any sense for Pinelands municipalities that are trying to calculate their household and employment projections because this density greatly exceeds the Pinelands' maximum densities even in Regional Growth Areas with the purchase of Pinelands Development Credits. Indeed, many Pinelands communities have pre-established densities under the Pinelands Comprehensive

Management Plan ranging from a high of one unit per 3.2 acres to a low of one unit per 40 acres. Therefore, Pinelands municipalities will never be able to accurately calculate their entitlement to adjustments to household and growth projections. Moreover, DEP has historically relied upon N.J.S.A. 58:11-25.1 to prohibit subdivisions in rural areas in excess of 49 lots that propose to use septic systems and individual on-site water wells. Thus, the maximum number of lots that a 1,000-acre farm might be able to yield may only be 49 if the community has no sewer or water utilities even if local zoning provides for one-acre minimum lot sizes.

RESPONSE: The Council's rules and projections will be amended in the near future to take into account the adopted DEP Water Quality Management Planning Rules, N.J.A.C. 7:15. In addition, the rules on the growth projection adjustment will be amended to provide different minimum units and jobs per acre based on planning areas, centers, sewer service areas and areas outside of sewer service areas. In areas outside of sewer service areas, the rules will reflect density based on septic standards consistent with DEP's new nitrate dilution standards. In addition, the Council will be updating its memoranda of understanding with various state agencies in the near future and will take the commenter's concerns into consideration at that time. It is also important to note that the municipality is not required to zone these sites for inclusionary development and may address its RDP or adjusted growth obligation using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6.

COMMENT: In a third round adjustment of household and employment growth projections (that is, vacant land adjustment), COAH's requirement that non-residential sites have a minimum presumption of 45 jobs per acre is too high for many suburban locations. The 45 jobs per acre requirement would be out of character with the remainder of the municipality and for the vast majority of suburban and exurban towns. In addition, instituting such a high floor area ratio (FAR) would force a developer to go to cost-prohibitive steel, rather than wood and to structured multi-level parking to be able to site the necessary amount of off-street parking.

RESPONSE: The Council's rules and projections will be amended in the near future to take into account the adopted DEP Water Quality Management Planning Rules, N.J.A.C. 7:15. In addition, the rules on the growth projection adjustment will be amended to provide different minimum units and jobs per acre based on planning areas, centers, sewer service areas and areas outside of sewer service areas. In areas outside of sewer service areas, the rules will reflect density based on septic standards consistent with DEP's new nitrate dilution standards. The commenter should note that with both adjustments, the municipality is not required to zone these sites for inclusionary development and may address its RDP or adjusted growth share obligation using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6.

N.J.A.C. 5:97-5.6(f)

COMMENT: N.J.A.C. 5:97-5.6(f) states that if the actual growth share obligation is less than the adjusted projected growth share obligation, the municipality shall continue to provide a realistic opportunity for affordable housing to address the adjusted projected growth share. Why do the rules not allow for a reduction of the obligation and a substitution of the municipal projection for COAH's projection?

RESPONSE: *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007), the New Jersey Appellate Division stated that, "If municipalities with substantial amounts of vacant land and access to infrastructure can decide for themselves whether and how much to grow, it is highly likely that housing opportunity will fall far short of identified housing need." *Id.* at 56. With this, the Court placed two limitations on the previous growth share approach the Council took which relied on municipally derived projections: the growth share methodology must contain a sufficient check on municipal discretion in adopting a master plan and zoning ordinance; and the growth share methodology must be based on data from which it can reasonably be concluded that the allocation formula will result in satisfaction of the statewide and regional needs. Therefore, the revised growth share approach relies in part on independent household and employment growth projections, which each municipality will utilize in its long range planning for affordable housing. In order to respond to the Court's concerns, the Council determined that an adjustment to these projections should only be warranted by lack

of available land capacity and not by factors that are within the municipality's control, a process similar although not identical to the vacant land adjustment process. Like the vacant land adjustment process, the Council believes that uniform minimum dwelling units and jobs per acre is a reasonable approach. The growth projection adjustment process was intentionally designed to create predictability for all parties, as with the vacant land adjustment.

COMMENT: In the example for Johnsonville, if there are only five sites available and development densities will be assigned by COAH as indicated, where will the affordable housing obligation associated with the 315 jobs be built?

RESPONSE: The municipality is responsible for submitting a plan that meets its overall affordable housing obligation. Municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, a market-to-affordable program or reconstruction programs. However, the Council will amend its rule in the near future to state that the Council will utilize the municipality's zoning to determine whether to assign the residential or non-residential density to each site remaining in the vacant land inventory.

COMMENT: What is the point of this policy if it only leads to the statement that obligations "may" be adjusted downward. If specific conditions are met as set forth, then obligations must be adjusted downward. There is no need for the Council to have so much discretion. If actual growth is less than projected growth, a municipality should be able to petition the Council for a ground-truthing reality. Forcing unwanted growth on towns will not benefit anyone if it is unplanned and ignores the town's wishes.

RESPONSE: The Council has the broad authority to implement the provisions of the FHA. In addition, *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007), the New Jersey Appellate Division stated that, "If municipalities with substantial amounts of vacant land and access to infrastructure can decide for themselves whether and how much to grow, it is highly likely that housing opportunity will fall far short of identified housing need." *Id.* at 56. With this, the Court placed two limitations on the previous growth share approach the Council took which relied on municipally derived projections: the growth share methodology must contain a sufficient check on municipal discretion in adopting a master plan and zoning ordinance; and the growth share methodology must be based on data from which it can reasonably be concluded that the allocation formula will result in satisfaction of the statewide and regional needs. Therefore, the revised growth share approach relies in part on independent household and employment growth projections, which each municipality will utilize in its long range planning for affordable housing. In order to respond to the Court's concerns, the Council determined that an adjustment to these projections should only be warranted by lack of available land capacity and not by factors that are within the municipality's control, a process similar although not identical to the vacant land adjustment process. Therefore, it is at the Council's discretion as to whether the municipality's growth share obligation will be adjusted.

N.J.A.C. 5:97-5.6(g)

COMMENT: COAH must eliminate the permissive nature of its rule. When land is a scarce resource, COAH must require techniques to stimulate redevelopment that includes affordable housing. COAH should add to its list of compliance techniques by requiring municipalities to cooperate with developers seeking use variances that provide a substantial contribution of affordable housing.

RESPONSE: The Council encourages reuse and redevelopment of existing buildings and land and encourages municipalities to cooperate with developers in granting reasonable variances and waivers to promote inclusionary redevelopment. However, Council does not dictate how a municipality must address its affordable housing obligation. Municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, a market-to-affordable program or reconstruction programs. The rules also contain a new section on redevelopment which has been added to capture the unique circumstances surrounding redevelopment that occurs specifically under the auspices of the Local Redevelopment and Housing Law, N.J.S.A.

40A:12A-1 et seq. In response to potential growth share opportunities, the Council may require one or any combination of the mechanisms listed in N.J.A.C. 5:97-5.7 as a condition for granting the growth projection adjustment. However, this analysis is done on a case by case basis by the Council.

COMMENT: COAH must require municipalities to prepare plans to foster redevelopment in order to address the portion of the projected growth share that cannot be accommodated with vacant residential and non-residential sites. This plan, similar to the plan for the 1987-1999 concept of unmet need, must be developed with the goal of addressing the entire need. Otherwise, the adjusted portion of the growth share must be reallocated to other municipalities so that it can be addressed.

RESPONSE: N.J.A.C. 5:97-5.7 requires a municipality that received a growth projection adjustment to evaluate the existing municipal land use map and inventory for areas that may develop or redevelop to identify additional opportunities to accommodate growth and corresponding affordable housing. The purpose of this rule is to capture additional affordable housing opportunities above the adjusted growth share obligation. If the municipality does have a site that may be suitable for redevelopment, the Council may require the municipality to capture affordable housing there. The Council believes that this addresses the commenter's concerns.

N.J.A.C. 5:97-6

COMMENT: The low/moderate income split should be met in every municipality but should be permitted to be met on a municipal-wide basis, subject to certain limitations. Different types of affordable housing units may serve one segment of the need better than others, and this should be considered. For example, both one-bedroom and three bedroom or larger rental units may be particularly suitable for low income households, while for-sale units may work better for moderate income households. Supportive living arrangements are already restricted to low income households only at N.J.A.C. 5:97-6.10(b)4. The rules already allow (at N.J.A.C. 5:97-6.8(c)3) that accessory apartments and buy down programs may be geared to either low or moderate income households or both. Perhaps this flexibility should be available in inclusionary developments and one hundred percent affordable housing developments, too, as long as the required 50/50 split is maintained throughout the municipality. This flexibility should be available to municipalities not only going forward, but also for the crediting of existing units.

RESPONSE: The Council agrees with the commenter that municipalities should be permitted flexibility in addressing their low- and moderate-income split requirement. COAH often grants municipalities waivers to utilize alternative income distributions so long as the municipal-wide split is 50/50.

COMMENT: COAH should grant double credit for existing affordable rental units that are purchased at an affordable purchase price by the low or moderate income tenant that are in workforce housing census tracts in municipalities that have a homeownership rate below 50 percent.

RESPONSE: A municipality may receive credit and an associated bonus for a unit that is provided above the rental obligation. Units that are located in workforce housing census tracts would be eligible for the bonus. However, pursuant to N.J.A.C. 5:97-3.5(c), no unit shall receive more than two units of credit for one unit.

COMMENT: The simplest, most economically efficient way of providing the needed affordable housing units is to allow for the construction of new or expanded land leased manufactured home communities. Municipalities should be encouraged by COAH to consider this option. These communities can be built quickly with reasonably sized communities of between 150 sites to 200 sites, or smaller expansions of existing communities, like the hundreds of communities which exist today which are actually providing low income housing without regulation to approximately one percent of New Jersey's population. One reason that percentage is so low is municipal zoning restriction. Manufactured home communities are typically built on smaller lots. Homes are less expensive, selling for between $ 50,000 and $ 100,000 for a three-bedroom unit. COAH's regulations did not provide a scheme for the hybrid mix of real and personal property (home ownership and lot rental) which is characteristic of this form of affordable housing. Any

new regulations should include provisions to accommodate this type of housing.

RESPONSE: The Council appreciates the commenter's suggestion. As mentioned previously, the Council will consider amendments in the future to address the unique concerns of the manufactured housing community.

COMMENT: Manufactured housing communities can do wonders for the affordable housing crisis. COAH needs to encourage towns to use this option as part of their affordable housing package. There exists an ongoing prejudice to "trailers". Our homes are delivered on wheels but we are not trailers. We need to educate COAH, town fathers, and the buying public to the attractiveness of manufactured housing.

RESPONSE: The Council appreciates the commenter's suggestion. As mentioned previously, the Council will consider amendments in the future to address the unique concerns of the manufactured housing community.

COMMENT: Of the nine mechanisms set forth in N.J.A.C. 5:97-6 for addressing a growth share obligation, only one mechanism is truly driven by market forces on a community-wide basis - that is the mechanism "zoning for inclusionary development" (N.J.A.C. 5:97-6.4) - and the rest of the mechanisms require various levels of municipal government involvement and intervention. An argument could be made to include "redevelopment" (N.J.A.C. 5:97-6.6) as a market-driven initiative because its process typically involves a private sector participant that endeavors to harness market forces to make redevelopment work. Many of the mechanisms for addressing a growth share affordable housing obligation, that is, ECHO units (N.J.A.C. 5:97-6.3), accessory apartment program (N.J.A.C. 5:97-6.8), assisted living residence (N.J.A.C. 5:97-6.11), and regional contribution agreement (RCA) (N.J.A.C. 5:97-6.12), have some level of restriction imposed by the new rules that prohibits the mechanisms from addressing the entire growth share obligation. Several of the remaining mechanisms, that is, redevelopment (N.J.A.C. 5:97-6.6), municipally sponsored and 100 percent affordable developments (N.J.A.C. 5:97-6.7), market to affordable program (N.J.A.C. 5:97-6.9), supportive and special needs housing (N.J.A.C. 5:97-6.10), and RCA and redevelopment require the expenditure of a substantial amount of time and effort and as well as municipal financial backing that typically result in addressing only a portion of a municipality's affordable housing obligation. Given these facts, zoning for inclusionary development is the most practical in most situations for municipalities because it can be implemented on a community-wide basis and requires little upfront municipal effort and costs for implementation. The way in which the new rules are written have the impact of forcing many municipalities to become "developers of affordable housing," which is something that the majority of municipalities lack in expertise and the capacity to raise funding.

RESPONSE: Municipalities have the ability to impose and collect development fees on all types of development. These fees, along with payments-in-lieu of construction, can be used to fund affordable housing activities. Municipalities can enter into contracts with nonprofit developers who will be able to develop and market the affordable units. The Council is developing an educational program to train administrative agents who will then be able to manage the units that have been created.

COMMENT: The proposed rules require municipalities to attain new competencies in developing land for affordable housing that they, in general, do not possess today, or may never truly develop. The proposed rules have an inherent presumption that there is an ample supply of legitimate affordable housing developers who can satisfy the heightened demand that municipalities will have in order to satisfy their growth share obligations. The proposed rules for growth share will force municipalities into untenable positions that require them to partner with developers and take on additional financial burdens to guarantee the construction of affordable housing.

RESPONSE: The Council believes that partnerships between municipalities and for-profit and non-profit developers are a cost-effective way for municipalities to provide affordable housing. Municipalities may pursue inclusionary zoning options or, in the alternative, may elect to undertake 100 percent affordable housing developments using available federal and state subsidy sources, as well as municipal development fees.

COMMENT: The commenter encourages additional incentives for the provision of affordable housing by means

other than inclusionary development, including redevelopment, rehabilitation, buy-downs, and rent control policies. Development fees and other incentives are a critical tool to allow municipalities that lack the natural and/or built infrastructure to support large scale inclusionary development or who prefer to avoid large-scale growth and to meet their affordable housing obligation through locally subsidized construction, redevelopment and rehabilitation. The COAH regulations should support and facilitate such activities. In the short term, such initiatives could surpass other efforts in actually having affordable housing provided without taxing the State's water supplies and infrastructure, as well as destroying forests, farmland and natural areas, with excess housing construction. This approach focused on redevelopment would be consistent with the basic premise of the State Development and Redevelopment Plan. COAH should also consider alternative approaches within the municipal land use process, planning and zoning for affordable housing at the regional or county level, and incentives and disincentives for county and municipal governments to take direct responsibility for bringing about affordable housing. The State should consider the creation of a fund similar to the Garden State Preservation Trust, which would provide matching grants to local governments and nonprofits to assist them in providing affordable housing in the many creative ways possible.

RESPONSE: The Council has provided many types of mechanisms to provide affordable housing. Most of the mechanisms provided in N.J.A.C. 5:97-6 do not require new construction.

N.J.A.C. 5:97-6.1

COMMENT: Suburban communities with higher-than-average property tax burdens should be permitted to fulfill a portion of their growth share by offering relief to families that have fallen on hard times. Robbinsville has been approached by families in which a death or divorce has left the family qualified for low- or moderate-income status and facing the loss of the family home. If the family home is suitable for affordable housing, it makes sense to allow the family to voluntarily deed-restrict the home and remain in place. Insurance companies have existing criteria for "life events" that could serve as guidelines for qualifying families. A deed-restricted home would be reassessed at its maximum resale value and the property taxes lowered, so the municipality would make a contribution.

RESPONSE: Municipalities have the ability to impose and collect development fees on all types of development. These fees, along with payments-in-lieu of construction, can be used to fund affordable housing activities. With additional information, the Council may consider this activity to be eligible for credit through N.J.A.C. 5:97-6.15.

N.J.A.C. 5:97-6.2

COMMENT: Rehabilitation loans are to be forgiven if the home is sold to a low/moderate income household. What if the rehabilitation was on an existing affordable unit?

RESPONSE: Owner-occupied, affordable units have deed restrictions that are in place until the unit is resold to another low- or moderate-income household or the controls on affordability are no longer in effect. If an affordable unit is rehabilitated for COAH rehabilitation share credit, then a lien will be placed on the property and recorded with the county clerk. While COAH encourages the use of low-interest or forgivable loans in municipal and county rehabilitation programs, they are not required.

COMMENT: The commenter suggests that COAH consider requiring lead and radon testing for all of its rehabilitation projects. Due to the seriousness of each of these potential health hazards, housing rehabilitation is an excellent opportunity to protect the most vulnerable population groups.

RESPONSE: The Council recognizes the importance of detecting potential health hazards. The State offers a variety of funding programs to remediate these potential hazards. A description of the programs can be found at www.nj.gov/dca.

COMMENT: There should be flexibility with respect to the required minimum dollar amount for rehabilitation.

The dollar amount should be scaled for each housing region, because the cost of materials and labor vary by region. Regional variations have been provided for low- and moderate-income limits, payments-in-lieu and RCAs and should be the case for rehabilitations.

RESPONSE: The Council has reviewed the cost of rehabilitation from housing region to housing region. Although there were differences in costs depending on the program being used to fund a rehabilitation program, the actual differences in cost of completing a rehabilitation project were minimal.

COMMENT: The Council should amend paragraph (c)1 to add ". . . or, in the case of a manufactured home, a lien recorded with the Motor Vehicle Commission."

RESPONSE: The Council appreciates the commenter's suggestion. As mentioned previously, the Council will consider amendments in the future to address the unique concerns of the manufactured housing community.

COMMENT: The Fair Housing Act established COAH and states that no municipal expenditures shall be required to fulfill an affordable housing obligation. Based on COAH's target housing and employment figures, and the burden of the above noted rehabilitation obligation, municipal expenditures will likely be necessary to implement a municipal housing plan. However, N.J.S.A. 52-27D-311d of the Fair Housing Act states that nothing "shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing." It also states that "while provision for the actual construction of that housing by municipalities is not required, they are encouraged, but not mandated, to expend their own resources to help provide low and moderate income housing." COAH's rules (N.J.A.C. 5:97-6.2(b)3) appear to be in direct conflict by requiring municipalities "to provide sufficient dollars to fund no less than half of the municipal rehabilitation component by the midpoint of substantive certification." The rules also require a minimum average expenditure of $ 10,000 per unit. Although the rules allow for a municipality to implement a loan program to recapture funds, it does not specify the details of such a program.

RESPONSE: The Council does not believe that its regulations regarding the rehabilitation program are in conflict with the Fair Housing Act. The Council notes that this requirement remains unchanged from N.J.A.C. 5:93. The Council further notes that the rehabilitation requirements have been put in place to ensure that a municipal rehabilitation program creates a realistic opportunity, as required by the Fair Housing Act. The Council encourages municipalities to search for alternate sources of funding. These sources can be in the form of grants from county or State programs or collected development fees. COAH encourages municipalities to implement a low-interest or forgivable-interest loan program. This would help fund future rehabilitation projects. The Council does not give direction on how to structure these loan programs because each municipality is different and should be able to provide its residents with a locally tailored program. COAH staff can offer assistance as to how to establish a local loan program.

COMMENT: The proposed revised third round regulations have substantially increased this municipality's rehabilitation obligation. This is counter-intuitive, since the municipality has experienced rehabilitation efforts, and as a general rule the local housing stock has improved over the past decade. It is unclear how any increase in the need for rehabilitation exists without the benefit of a town-wide site inspection; the commenter submits that such an assessment would result in a significant reduction in the municipality's rehabilitation obligation.

RESPONSE: The methodology used to calculate each municipality's rehabilitation share is based on 2000 Census data. The rehabilitation share is based on: 1) the number of units built prior to 1950 that are overcrowded; 2) units that lack complete plumbing; and 3) units that lack kitchen facilities. The result of this calculation is units which may need rehabilitation. The Census counts housing units, not bedrooms. As a result, the unit of credit to address the rehabilitation share is an entire housing unit, not a bedroom. The Council will propose an amendment in the near future that would permit a municipality to conduct an exterior housing survey to determine an actual count of deficient units occupied by low or moderate income households, as permitted in N.J.A.C. 5:93.

COMMENT: In communities where the calculated rehabilitation numbers are high and the Council has retained the

right to impose a remedy against the municipality for failing to appropriately spend trust fund monies, and, specifically, to solicit or accept proposals from developers to either create or rehabilitate affordable housing, offering a preference for those proposals which feature rehabilitation may be appropriate. The commenter supports the application of a preference to such rehabilitation proposals.

RESPONSE: The Council thanks the commenter for the suggestion. The Council does not believe it is necessary to change the rule as the rule provides sufficient flexibility to permit the commenter's suggestion.

COMMENT: In the 2004 regulations, and the subsequent handbook created, the agency created an issue which should be resolved. In the context of recent *Mount Laurel* litigation, a developer sought a builder's remedy based upon the rehabilitation share of a municipality. The proposal did not seek to replace or rehabilitate the units in need of rehabilitation, but instead sought to build new units leaving the units in need of rehabilitation in place. The problem was created when COAH indicated new construction could serve to satisfy the rehabilitation share. The regulations should be made clear that new construction may satisfy the rehabilitation share provided the new construction is replacing units in need of rehabilitation. It serves no valid purpose to provide new construction can satisfy the rehabilitation component, if the units in need of rehabilitation are not brought up to code or replaced. In such event, the rehabilitation obligation would still remain. The issue was not resolved by the Court in its decision in the case.

RESPONSE: The rule will be amended in the near future to state that new construction may be used to satisfy the rehabilitation obligation. It is the Council's intent that in such instances, the municipality is considered to have addressed its rehabilitation obligation.

COMMENT: The proposed rules mandate that the rehabilitation program include rental units and require an affirmative marketing plan for the re-rental of units. Most significant is the COAH requirement that funding be allocated via general revenue or bonds to fulfill one half of the rehabilitation obligation by midway through certification. This is likely to be problematic since several communities have insufficient money banked in an affordable housing trust fund.

RESPONSE: The Council requires a municipality to insure that there is adequate funding to complete all units that are part of the rehabilitation share. Bonding or the use of municipal revenues would only be necessary if funding was not in place at the midway point. This time gives the municipality the opportunity to apply for State or county assistance or to collect additional development fees. The commenter is correct that rental units must be included in any municipal rehabilitation.

COMMENT: COAH should allow volunteer labor and donated materials to count toward credit for rehabilitating pre-existing and occupied affordable housing units, and exempt the requirement for affordability controls. The national non-profit organization Rebuilding Together rehabilitates dilapidated units that are occupied by low income people using mostly volunteer labor and donated materials. Last year in New Jersey, 1,640 volunteers worked on 47 units that house 365 people in Bergen County, Essex County, Gloucester County, Jersey City, Morris County and Ocean County. COAH does not provide any mechanism to count these rehabilitation projects as credit against the municipal rehabilitation obligation. Additionally, the organization does not require that affordability controls be imposed on the unit. However, the organization makes a determination that the household is likely to remain in the unit before undertaking the project.

RESPONSE: The Council has set a minimum amount of rehabilitation that is necessary to receive rehabilitation share credit. A second requirement to receive COAH credit is the control on affordability. The controls insure that a low- or moderate-income household will occupy the unit throughout the control period. These controls are in the forms of liens and/or deed restrictions. The Council recognizes the great service that non-profit organizations provide to low- and moderate-income citizens. In fact, the Council has worked closely with nonprofit organizations such as Habitat for Humanity to find ways to modify their programs and COAH rules, as appropriate, to allow such units to receive COAH credit. The Council encourages the commenter to meet with COAH staff to explore ways in which such units might be

eligible for COAH credit.

COMMENT: The regulations require that the rehabilitation component include rental units. The rules state that if the county sponsored rehabilitation program is only for owner occupied units, the municipality must establish a rehabilitation program for rental units. There must be a municipal administrative agent for this program. There is no provision for funding this mechanism.

RESPONSE: The Council is working with the counties that do not have rental rehabilitation as part of their rehabilitation programs to help expand these programs. Some counties do provide renter-occupied and owner-occupied rehabilitation. Various State funded programs provide for administrative costs. In addition, the development fees deposited into Housing Trust Fund Accounts are available for administrative costs. Administration of rehabilitation programs and the re-rental of rehabilitated units would be allowable costs for the use of administrative fees under the development fee program.

COMMENT: The rule should be amended to state explicitly that a municipality may address all or part of its Rehabilitation Share through the construction of new affordable housing, as stated in the COAH Handbook and previous editions of the Substantive Rules.

RESPONSE: The Council thanks the commenter for the suggestion. The rule will be revised in a future rule amendment to include such a provision.

COMMENT: Would rehabilitation of a group home count per bedroom?

RESPONSE: The methodology used to calculate each municipality's rehabilitation share is based on 2000 Census data. The rehabilitation share is based on: 1) the number of units built prior to 1950 that are overcrowded; 2) units that lack complete plumbing; and 3) units that lack kitchen facilities. The result of this calculation is units which may need rehabilitation. The Census counts housing units, not bedrooms. As a result, the unit of credit to address the rehabilitation share is an entire housing unit, not a bedroom. All of the units in such a development would be considered age restricted housing.

COMMENT: In past rounds the commenter was allowed to assist low income home owners in his or her own municipality by providing rehab dollars. This was a venue for the municipality to aid its own residents. The plan also does not allow the municipality to give local qualifying families first choice when an affordable unit becomes available.

RESPONSE: The rehabilitation program remains available to low- and moderate-income homeowners within the municipality. Municipal preference continues to be permitted for the rehabilitation program with regard to owner-occupied units. However, a municipal rehabilitation program must include provisions for owner-occupied and renter-occupied units. Units that are rehabilitated and occupied by renters must be affirmatively marketed if a rental unit becomes vacant during the 10-year period of deed restriction. Municipal residents have an equal opportunity to apply to live in the renter-occupied rehabilitation units.

COMMENT: COAH should grant one credit for each unit that is within multi-family structures where the common elements are rehabilitated. Often times the rehabilitation action addressed a structural or mechanical issue that impacts the entire building and is not limited to specific units. For example, the building roof or boiler might be replaced. Other programs provide funding for common similar common area improvements in two- to four-family structures.

RESPONSE: This activity is currently permitted. Housing units that are part of a multi-unit structure may receive credit provided that all households are income eligible. In addition, all units must comply with N.J.A.C. 5:97-6.2 to be eligible for credit.

N.J.A.C. 5:97-6.2(b)

COMMENT: In order to receive rehabilitation credit, a municipality should have to show that the unit rehabilitated fell into one of the categories used to generate Rehabilitation Share, lacking complete plumbing, lacking a complete kitchen, or overcrowded units built pre-1950. Otherwise COAH is granting credits that do not respond to any recognized need.

RESPONSE: The rehabilitation share is based on the 2000 Census. The rules establish a minimum average amount to be spent on a unit and require that a major system be replaced. The Council believes the criteria in the rule are sufficient to ensure that units in need of rehabilitation are addressed. Further, the Council believes that the commenter's suggestion would impose an unfair burden on municipalities and would be difficult to implement.

COMMENT: The explicit requirement that a local housing rehabilitation program be established for rental units, even if a municipality participates in or relies on a county housing rehabilitation program for owner-occupied units, is a welcome addition to the rules.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-6.2(b)2

COMMENT: The rule proposal establishes the minimum average hard cost of rehabilitation to be $ 10,000. Experience in bringing a substandard unit up to code demonstrates that the average hard cost must be much higher. COAH should investigate the average hard costs at county programs. The minimum average hard cost should be at least $ 20,000.

RESPONSE: N.J.A.C. 5:97-6.2(b)2 establishes an average amount to be expended for each unit in a rehabilitation program. This gives flexibility to towns that may need to expend additional funds to complete a unit with more than one major system, while allowing lower expenditures on another unit. The Council wishes to retain this flexibility for municipalities who petition for substantive certification.

N.J.A.C. 5:97-6.2(b)3

COMMENT: The dollar amount provided at any point during the substantive certification period should be related to actual demand for the program based on an updated waiting list of qualified applicants. The Rehabilitation Share is generally over-estimated at the municipal level, and therefore to require the set-aside of monies for programs for which there is no demand is unduly burdensome.

RESPONSE: To ensure consistency for the rehabilitation portion of municipal obligations, COAH has established criteria for determining deficient units in prior rounds. These criteria were again employed for the Third Round Rules that were adopted on December 20, 2004. Although some variables were changed to reflect the passage of time since the first adoption of COAH's rules, the calculation remains consistent. Successful marketing of a rehabilitation program will provide the property owners who need their units rehabilitated.

COMMENT: Municipalities should not have to commit to funding one-half of the rehabilitation requirements by the mid-point of substantive certification. The timeline for substantive certification begins when the municipality petitions for substantive certification. However, it may be several months, if not years, after the petition date that the municipality actually receives substantive certification. Many factors impact the timeline for receipt of substantive certification, including potential objectors to the municipality's plan, necessary Plan revisions and review time for COAH staff. Therefore, the timeline for funding of the rehabilitation program should be specifically linked to the granting of substantive certification, rather than the time when the municipality petitions for substantive certification.

RESPONSE: Pursuant to N.J.A.C. 5:97-1.4, substantive certification is defined by a period of 10 years that begins when a municipality files its Housing Element and Fair Share Plan with the Council. When a municipality petitions for substantive certification the municipality receives the benefit of being under the Council's jurisdiction and in turn

receives protection from litigation. By receiving this protection, the municipality has committed to fully participate in the COAH process. Municipalities may seek grants from other sources to fund their rehabilitation program; however, the Council believes the requirements to fund one-half of the rehabilitation share by the midway point is reasonable and demonstrates a realistic opportunity for the provision of affordable housing.

COMMENT: The Fair Housing Act states that "while provision for the actual construction of that housing by municipalities is not required, they are encouraged, but not mandated, to expend their own resources to help provide low and moderate income housing." COAH's rules (N.J.A.C. 5:97-6.2(b)3) appear to be in direct conflict by requiring municipalities "to provide sufficient dollars to fund no less than half of the municipal rehabilitation component by the midpoint of substantive certification." This needs to be addressed. The State should provide sufficient funding to ensure their proposed rules can be implemented.

RESPONSE: The commenter has misinterpreted this provision to mean that a municipality must expend its own resources to fund the municipal rehabilitation component. The municipality may "provide sufficient dollars" from any available source of funding, including affordable housing trust funds, to address its rehabilitation obligation.

N.J.A.C. 5:97-6.2(b)6

COMMENT: "A municipal rehabilitation program shall provide for the rehabilitation of rental units." Municipalities with small rehabilitation obligations should be provided flexibility in regard to this standard. An exemption for communities with 20 rehab units or fewer should be considered.

RESPONSE: The Council believes that requiring the rental rehabilitation requirement for all municipalities is reasonable. The commenter has not provided a compelling reason for an exemption for municipalities with small rehabilitation obligations.

N.J.A.C. 5:97-6.2(c)

COMMENT: It is unclear if controls on affordability are mandated for all participants in a rehabilitation program. If this is mandated, it will be difficult to attain the rehabilitation target number since the units were generally purchased as market units and owners will have little incentive to participate when their equity is at stake.

RESPONSE: Upon completion of rehabilitation for COAH credit, owner-occupied units and renter-occupied units shall have affordability controls in place. The controls shall be for a minimum of 10 years and in the form of a lien, for owner-occupied units, or deed restriction and/or lien, for renter-occupied units, and recorded with the county clerk. These controls ensure that units addressing a municipality's rehabilitation share remain affordable throughout the municipality's period of substantive certification.

N.J.A.C. 5:97-6.2(g)

COMMENT: COAH needs to evaluate the validity of the current rehabilitation component. The likelihood that the number of units in urban areas where the rehabilitation component is high can actually be rehabilitated within the current housing period is unreasonable. The Council should reinstate the following provision: A municipality receiving State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.) may seek a waiver from addressing its entire rehabilitation component in one ten year period of substantive certification. A municipality seeking such a waiver shall demonstrate that it cannot rehabilitate the entire rehabilitation component in 10 years and or that an extraordinary hardship exists, related to addressing the entire rehabilitation component in ten years.

RESPONSE: The rule will be amended in the near future to implement the commenter's suggestion. Pursuant to N.J.A.C. 5:96-15, any person may request a waiver from a specific requirement of the Council's rules at any time. A municipality may seek a waiver if it believes there is an unnecessary financial, environmental or other hardship.

N.J.A.C. 5:97-6.2(h)

COMMENT: Please do not reference other statutes (N.J.A.C. 5:95) without stating what this statute is. The commonplace use of citations makes following these regulations nearly impossible, especially here when referencing other regulations.

RESPONSE: The commenter should note that the referenced chapter of the New Jersey Administrative Code (N.J.A.C. 5:96) is the companion rules (Procedural Rules) proposed concurrently with the rules commented upon, N.J.A.C. 5:97, the Substantive Rules.

N.J.A.C. 5:97-6.3

COMMENT: COAH should not allow a municipality to receive credit for ECHO housing in addressing the rehabilitation component. It does not respond to the housing need. It does not result in a rehabilitated housing unit; nor does it result in a new housing unit for the general population of low and moderate income households. It results in housing for family members.

RESPONSE: The Council recognizes that ECHO housing units are generally not affirmatively marketed and has thus permitted them to be used to address the rehabilitation obligation. The Council believes that ECHO units provide a viable housing option for some communities and should continue to receive credit against the rehabilitation obligation.

COMMENT: The commenter suggests that in the definition of ECHO units, after "modular" include "or manufactured home."

RESPONSE: The Council appreciates the commenter's suggestion. As mentioned previously, the Council will consider amendments in the future to address the unique concerns of the manufactured housing community.

N.J.A.C. 5:97-6.4

COMMENT: COAH should consider amendments to its proposed rules that (a) recognize that receiving zones provide for land preservation in Highlands sending zones and thus serve an important public purpose in protecting the Region's water supply; (b) base density in a Highlands receiving zone should be based upon the municipality's conformance with the Regional Master Plan; and (c) the additional TDR units created through the designation of a Highlands receiving zone do not trigger growth share obligations.

RESPONSE: The Council recognizes the importance of protecting the region's water supply and the significance of using TDR as a tool to protect land owner equity in Highlands sending areas. The provision of affordable housing to current and prospective residents of the region is also an important public benefit. In developing growth allocations in the Highlands Region, the Council's consultant worked closely with Highlands staff to ensure that environmental considerations were accounted for. The Council notes that, as of the date of this rule adoption, the Highlands RMP is in draft form and has not been adopted. Upon adoption of the Highlands RMP, the Council will consider its impacts. COAH intends to work cooperatively with the Highlands Council to enter into a Memorandum of Understanding in the near future and may consider a future rule amendment to address the issue of TDR.

COMMENT: Sites zoned for inclusionary development meeting all other COAH criteria should not be required to be the subject of a developer's agreement or a planning board resolution setting forth mutually agreed to terms for the production of affordable housing; the specification of set asides and densities should be eliminated; and sites proposed to satisfy the rental obligation should not required to have a developer's agreement with planning board approval with mutually agreed to terms for the production of affordable housing. These are impracticable and destructive provisions and represent a radical departure not only from prior COAH policy but from the fundamental idea that what is required is not affordable housing production, but a realistic opportunity for developers to build the requisite housing. The latter

is articulated most recently in *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing*, 390 *N.J. Super*. at 380, which recognizes that "[m]unicipalities need not guarantee that the required amount of affordable housing will be built, but must only adopt land use ordinances that create a realistic opportunity to meet the regional need and their rehabilitation share." With this Rule, it is not sufficient that land meeting all COAH standards is zoned for affordable housing, even though the Fair Housing Act, N.J.S.A. 52:27D-311a(1), provides that rezoning is a permissible compliance technique. Now there has to be a developer's agreement or planning board approval and, in the latter case, one where the developer has agreed to all of the affordable housing terms. This is obviously unworkable, as municipalities have no control over sites for which there is no current development activity, and there very well might not be a developer involved. Moreover, giving the developer the extraordinary power of dictating terms to a planning board as part of its approval or in a developer's agreement represents an enormous constraint on municipal power and a gift of power to developers. It is like giving a developer a builder's remedy without the developer winning an exclusionary zoning lawsuit. This should not be permitted. It is not sufficient that proposed N.J.A.C. 5:97-6.4(b)2iii provides the option of rezoning before adoption of the regulation, since that requires an increase in density, which will not apply to sites already zoned, and specifies set asides and densities, a tack COAH wisely abandoned in the current Third Round Rules in favor of added flexibility to municipalities when undertaking inclusionary zoning initiatives.

RESPONSE: The commenter has misinterpreted the intent of the proposed rule. Proposed N.J.A.C. 5:97-6.4(b)2 and 7 list the criteria to be used by the Council in determining specifically whether affordable units proposed to be produced through the use of zoning presents a realistic opportunity. The criteria listed are separated by the conjunction "or" which means that any one of the criteria will be acceptable to the Council. The rule has been clarified to specify that "at least one of" the conditions are met. Further, the rule will be amended in a future proposal to provide minimum presumptive densities and maximum presumptive set-asides based on SDRP planning area.

COMMENT: The commenter applauds the efforts of the Council regarding inclusionary zoning and believes that inclusionary zoning brings more benefits than just providing affordable housing. It also means that people are integrated within the community and it brings the community together where people can know one another. It offers opportunities for shared interest and common experience. Inclusion also means acceptance. As people get to know one another and see the likenesses that people have towards one another, they learn from one another and the stereotypes are broken down. And, finally, inclusion means participation because people are coming from different perspective, they have opportunity to get together and to participate and discuss their common issues.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The regulation should be revised to provide that the growth share obligation can be satisfied by a developer making a financial contribution for the reconstruction (a/k/a gut rehabilitation) of existing substandard units within the municipality. In the comments to the original Round Three regulations, COAH made clear that reconstruction activity could satisfy the growth share obligation but the proposed regulations are silent on this issue. COAH should provide standards regarding the amount of a contribution which a municipality may impose on a developer and the incentives such a developer should be entitled to. This would lessen the burden of the growth share obligation on developers in less affluent communities and would promote the renewal of dilapidated areas of these communities.

RESPONSE: The reconstruction of existing substandard units within the municipality continues to be a permitted and encouraged approach to providing affordable units. Municipal ordinances must authorize the use of this or other mechanisms if the ordinance allows affordable units to be provided off site.

COMMENT: The rules provide an option for sale or rental units with a further density increase if the developer chooses rental units. Why should there be a density bonus for a rental unit, but not a sale unit if they are both contributing to affordable housing? The rules also present a presumptive density of (N.J.A.C. 5:97-6.4(b)) 10 units per acre regardless of whether this is appropriate to the surrounding development pattern of a site, or exists elsewhere in the community. Zoning and land use development should be compatible with the existing neighborhood. However, COAH

does not provide for an analysis of appropriateness.

RESPONSE: Zoning can not dictate tenure and there is no zoning mechanism that can guarantee the production of rental units. To extend flexibility to municipalities, the Council will accept a written agreement between the municipality and a developer that commits to the production of affordable rental units as demonstration that realistic opportunity exists. This requirement is only necessary when the municipality is specifically relying on a particular development to generate rental units that are being used to address the rental requirement of proposed N.J.A.C. 5:97-3.4 and the Council is being asked to recognize the units as rentals in advance of construction. Alternatively, the Council believes that if the higher density increase required by proposed N.J.A.C. 5:97-6.4(b)2 has been provided and the site is zoned to accommodate a minimum of 10 units per acre, development of the site is realistically likely to be rental units.

COMMENT: COAH's regulations set forth one set of rules for a site if the zoning is in place on or before the effective date of the rules. In contrast, there is another set of requirements if zoning is changed subsequent to December 17, 2007. The rules allow the higher of the current density or the density allowed on December 17. COAH also requires that the zoning shall include additional developer incentives such as: relief from regulatory requirements, waived or reduced fees, tax abatements, and direct financial aid in the form of a loan or grant. (N.J.A.C. 5:97-6.4). This is contrary to the Municipal Land Use Law.

RESPONSE: The intent of the rule was to determine what density serves as a "base density" for the purpose of determining whether a density increase has been provided for the purpose of ensuring the financial feasibility of inclusionary zoning. However, the rule will be amended in the near future to delete this provision and instead provide for minimum presumptive densities by SDRP planning areas.

COMMENT: The regulation should be revised to require municipalities to impose affordable housing contributions and determine compensatory benefits, which will adequately compensate the developer for making the affordable housing contribution on, a case-by-case basis depending on the characteristics of the development. COAH should consider the development of modestly priced residential units in less affluent communities, which target median income or slightly above median income households, as part of the solution for the State's housing problems, not part of the problem. There needs to be a distinction between these modestly priced market rate units, which target the median income or slightly above the median income, and the large lot, single-family subdivision in an affluent community. It would be a great disservice to the affordability of housing in this state, if COAH's regulations impose such a high cost on residential development that only large lot, single-family homes in affluent communities can make these affordable housing contributions and still be developed. In addition, the regulation should be revised to empower a developer to work with a municipality to select the method to make its affordable housing contribution to address the actual growth share obligation generated by its development. Many sites have numerous constraints on the amount of development they may have, which prohibit a developer from developing more units onsite. The developer should have flexibility to work with the municipality to select the appropriate affordable housing contribution for the development. Finally, the Report recommends that compensatory benefits be decided on a case-by-case basis due to the "wide variation in local markets." Stated elsewhere in the Report, at page iv, "higher density bonuses are needed in lower-income areas, while lower density bonuses are needed in higher income areas." The regulations make no distinction between lower-income areas and higher income areas. The regulation should be revised to provide increased densities and compensatory benefits for developer in lower-income areas.

RESPONSE: Following the directive of the court in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super*. 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007), the Council determined that more specific guidance was necessary to ensure the uniform application of land affordable housing requirements throughout the State. However, the rule does clearly indicate that municipal zoning ordinances may allow the developer the option of providing the units elsewhere in the municipality. The ordinance may allow any or all of the other delivery mechanisms in N.J.A.C. 5:97-6.6 though 6.15 to be used in this case. Infill development elsewhere in the community and market to affordable write down units may be ideally suited for this purpose depending on the characteristics of the community. While a report in Appendix F to the rule does indicate that "higher density bonuses are needed in

lower-income areas, while lower density bonuses are needed in higher income areas," the report does not recommend that compensatory benefits be decided on a case-by-case basis. Rather, the report acknowledges that while a presumptive level of incentives and/or the sufficiency of a particular package of compensatory benefits might be best judged on a case-by-case basis, the key component of the Appellate Division's recent findings require the Council to either develop a presumptive level of incentives and/or determine through its regulations whether a municipality's plan of incentives to developers is sufficient to induce affordable housing. The rule will be amended in the near future to provide minimum presumptive densities by SDRP planning area and will provide reduced set-asides for rental project in qualifying census tracts.

COMMENT: The incentive that you're providing of a slight incremental boost in the number of units is not really an economic incentive that's great enough to offset the burden and the cost that you're putting on with this affordable housing. Where you can maybe address additional incentives is through taking some of the risk and the cost and the time and the expense out of an incredibly rigorous approval process where developers are asked to put hundreds and hundreds of thousands of dollars and years into trying to get sites approved to be, you know, knocked down in Trenton or to be sent back and lose on those approvals. That's one of the things the Massachusetts program did very effectively is that they take a lot of that risk and time and expense out of that affordable housing and actually got more. None of the other State agencies that you are beholden to in order to get a project actually built, mainly the DEP, is held by any of these standards. So you can do all these things all you want, if you can't get through the processes it doesn't matter.

RESPONSE: Regulations established by other agencies are outside of the Council's purview and outside the scope of the proposed rule. However, the Council's staff has been working with other State agencies to develop expedited approvals for affordable housing developments. While risk is an inherent part of the real estate development process, some programs like Chapter 40(b) in Massachusetts, offer developers a right of appeal if the local zoning board rejects the project or imposes conditions that are uneconomic. This process is built in to New Jersey's Municipal Land Use Law. In exchange for appeal rights and the provision of a 25 percent affordable set-aside, developers using the Massachusetts law must also agree to restrict their profit to a maximum of 20 percent in for-sale developments and 10 percent per year for rental developments. This provision is enforced with follow-up audits.

COMMENT: This section requires inclusionary zoning ordinances to require developers to fully integrate low and moderate income units into the development. A better description of what full integration means is needed. For example, in single family developments, can COAH units be constructed as multi-family units and still be considered fully integrated into the development? Can a traditional townhouse development include one story flats to accommodate the COAH units?

RESPONSE: The Council will strengthen the rule in a future amendment to require municipalities that adopt inclusionary zoning ordinances to allow attached housing as necessary to make affordable housing realistically possible. The design of multi-unit structures to have an appearance that fits almost un-noticeably into singe-family detached neighborhoods has been used successfully in several New Jersey municipalities as well as nationwide. Many design techniques that incorporate single-story flats into multi-story townhouse designs have also been successful. It should be noted that the Council recognizes that full integration of affordable units is not always practical and that the rule clearly indicates that full integration is to be achieved to the extent feasible.

COMMENT: The commenter cautions the Council, with the 20 percent set aside, we are very much in favor of inclusionary housing, but that low and moderate income households not be segregated within the development. Segregating any group of people is not good for the community as well as for the individuals involved. The commenter requests that the Council on Affordable Housing also look at a funding pool as they're moving forward with housing that you use the scattered site approach that you do not segregate people and that you really do integrate according to the inclusionary zone.

RESPONSE: The Council now requires, to the extent feasible, the full integration of affordable units and market-rate units. As an administrative and regulatory agency, COAH does not provide any funding. However, the

commenter's suggestion will be forwarded to other agencies in State government that do provide funding.

COMMENT: In terms of the compensatory mechanism for provision of affordable housing in this sort of inclusionary zoning concept, it would be a good idea to clarify that a municipality that chooses to do a traditional inclusionary development where they simply increase the density could just do a 20 percent set aside. Because there is a significant increase in density that's being given to a developer, there is a compensatory benefit for a 20 percent set aside which is something that has traditionally been there and developers are used to. The inclusionary zoning compensatory benefit should really apply where you're not changing the zoning and you're not given any kind of an increase in density other than the additional one market unit for every affordable unit. But there ought to be recognition that there are other kinds of compensatory benefits that could potentially be available to developers.

RESPONSE: The density increase of one market rate unit for each affordable unit and corresponding 20 percent set-aside was proposed as a minimum standard to be used only to determine if changes proposed by municipalities reflect a realistic opportunity for the construction of affordable housing in consideration of compensatory benefit issues raised by the Appellate Division in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007). This minimum standard was designed to capture only the affordable housing obligation generated by a specific development. The rule does not preclude a municipality from exercising its discretion to provide higher density bonuses and higher set-asides. However, the rule will be the subject of a future amendment wherein the Council will consider minimum presumptive densities for inclusionary zones based on SDRP Planning Areas.

COMMENT: There should be a clarification that although you can appeal compensatory benefits, it's not clear who would appeal them to and it should be to COAH. A number of towns did keep their old growth share ordinances in place and they were protected by the stay if they adopted them before a certain date. The problem with those towns now is that they are being stuck with additional grow share obligation if those--if in fact they implemented those ordinances as a one for eight. And it seems to me there ought to be some relief for those towns or recognition that they were abiding by COAH rules as they knew them to be at the time.

RESPONSE: The appeal process outlined in the rule envisions appeals to be heard by COAH. However, the rule will be amended in the near future to delete this provision in its entirety. The Council recognizes that some municipalities may have adopted zoning ordinances and approved development applications based on the growth share ratios set forth in the December 2004 version of the rules. Consequently, an amendment to the rules will be proposed to provide a two-for- one credit for any affordable housing approved between December 20, 2004 and June 2, 2008 provided the units approved were part of a plan submitted to the Council specifically to address the growth share portion of the third round obligation.

COMMENT: Inclusionary zoning ordinances should not be permitted to be enforced until COAH has approved the same. Many towns under the prior Third Round rules adopted growth share ordinances not in conformance with the regulations and enforced the same against developers. COAH eventually required the town to revise it as part of a Third Round Certification, but it was too late for the developer. At a minimum, a developer should have the ability to file an appeal to COAH for an expedited review of whether the ordinance is compliant, facially and as applied.

RESPONSE: Municipalities are authorized to adopt zoning under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., which is outside the scope of the proposed rule. Additionally, the Council believes it is important for municipalities to be able to implement affordable housing plans as promptly as possible. Delaying a municipality's ability to enact inclusionary zoning would not benefit affordable housing production.

COMMENT: With rural residential zoning, it's very difficult to do inclusionary development when you've carefully crafted your agricultural residential zoning to have the density that would both allow us to continue to preserve agriculture and not pollute the groundwater because we rely on well and septic. We do all kinds of hydrological calculations and present them in court that this is the density that we can tolerate in these areas. So it's not quite as easy

as just passing an inclusionary ordinance and saying, okay, developer if you build eight houses, you have to build this many low and moderate or to give them a density bonus. We are a town with two sewer service areas, but--with the exception of these 250 houses that have already gotten preliminary--we're just about maxed out on our sewer. We have set aside some for COAH, but again not the magnitude that we need now. So this sudden increase in obligation is a serious problem for us.

RESPONSE: The Council encourages municipalities to utilize clustering, lot averaging attached housing and other zoning tools to accommodate affordable housing opportunities wherever practical and will amend its rules in the near future to require consideration of such tools. Payment in lieu options also provide opportunities to fund affordable housing elsewhere in the municipality when on-site production is not practical. In municipalities where there are also sewered areas, higher densities and set-asides could be used as to offset growth share that results from development in un-sewered areas. Municipalities have a great deal of flexibility in crafting zoning and when inclusionary zoning is used, the obligation may be fulfilled with a higher set-aside and density on some sites or zones and a lower set-aside and density on other sites or zones. While the Council recognizes that an extension to a sewer service area is not possible for some locations of the State, septic systems may be possible in accordance with DEP's regulations. DEP has granted more than 100 permits for small and innovative technology wastewater treatment plants and is actively working with the Pinelands Commission to test the use of individual innovative septic treatment units on one-acre residential parcels. Municipalities may work with DEP to safely apply such technology to provide affordable housing in other parts of the state. Finally, it should be noted that municipalities have a myriad of options available for meeting their affordable housing obligations, of which inclusionary development is only one option. Additional options that do not rely on new inclusionary development include the market to affordable program which allows a buying down of existing market-rate units, reconstruction of existing units, municipally sponsored rental programs and accessory apartment programs. Programs available to municipalities are detailed in N.J.A.C. 5:97-6.

COMMENT: COAH should continue its successful policy, upheld by the Appellate Division, of exempting inclusionary developments with a 15 percent rental set aside or 20 percent sales set aside from any growth share obligation. Only in this way will municipalities have the incentive to zone for high-density inclusionary development. The Court in *Mount Laurel II* envisioned private developers as the engine that would drive the construction of affordable housing. Limited tax credits, the declining market for tax credits and the New Jersey's fiscal woes will severely limit the amount of affordable housing that can be produced by 100 percent affordable projects. If towns and builders have enough incentives, inclusionary development can continue to provide most of the affordable housing in this State. The proposed rules actually encourage municipalities to do everything they can to discourage inclusionary development by acquiring vacant residentially zoned land for open space (like *Mount Laurel* in the *Mipro* case) and retain large lot residential zoning, commercial/office/industrial zoning and recreational use. They don't gain anything by amending ordinances to zone for high-density inclusionary development except higher taxes for their residents.

RESPONSE: This provision continues from N.J.A.C. 5:94 and remains unchanged. The rule continues to exempt market-rate units in an inclusionary or mixed-use development where the affordable housing units received credit in a first or second round certified plan or a court judgment of compliance or are eligible for credit pursuant to N.J.A.C. 5:97-4 toward a municipality's prior round obligation, which have been or are projected to be constructed after January 1, 2004, provided these sites are zoned to produce affordable housing units.

COMMENT: The rule on inclusionary zoning should recognize that where a municipality's existing zoning permits residential development at a density of six dwelling units or more per acre for multi-family development, then the municipal zone plan has already provided the necessary compensatory benefit to require a maximum affordable housing set-aside of 20 percent. Such an approach would be consistent with the presumptive densities for affordable housing that were established in COAH's second round rule and that have supported production of much of the State's affordable housing stock over the past decades.

RESPONSE: When the existing density permits six units per acre and has been the result of a previous density increase to result in a set-aside of 20 percent, no further density increase would be required. Where no previous

affordable housing requirement exists, a density increase must be provided the render the institution of the new affordable housing requirement financially feasible. A developers agreement demonstrating that additional density is not required to produce the municipally mandated set-aside may be submitted to the Council as a surrogate for site-specific zoning.

COMMENT: By not providing any meaningful financial incentive to build affordable housing, COAH's rule proposal substantially increases the cost of providing market housing. Only the highest priced housing can support this cost. The cost will discourage developers from constructing lower priced single family homes and attached housing. The financial disincentives to construct attached housing will not allow the private sector to address the needs of New Jersey's cost burdened, smaller households, middle class and minority households.

RESPONSE: The rule will be the subject of a future amendment wherein the Council will consider minimum presumptive densities for inclusionary zones based on SDRP Planning Areas. It is anticipated that an additional benefit of this approach will be a wider range of housing types that will also be available to middle-income households as well as low and moderate-income households. The proposal will also require consideration of attached housing types to make the construction of affordable housing realistically possible.

COMMENT: Municipalities that up-zone for higher density development should not be required to provide an additional density bonus.

RESPONSE: If the up-zoning that took place was specifically implemented with an affordable housing set-aside that meets the Council's standards, no additional density increase would be required.

COMMENT: Since what has traditionally been referred to as "inclusionary development" and what is presently being referred to as "growth share" are now effectively the same thing, there is no way for a municipality to "get ahead" in the quest to meet its affordable housing obligations. Therefore there is no incentive for a municipality to increase the density on a suitable parcel in order to produce more affordable housing units. If a municipality increases the density on a parcel in order to create an inclusionary development, the growth share obligation increases accordingly at the four to one ratio, so nothing is gained from a compliance standpoint. There needs to be a mechanism for municipalities to catch up, especially with the proposed retro-active growth share back to January 1, 2004. An alternative may be to allow a municipality to subtract the additional growth share that would accrue from the market rate units if the density is increased to permit an increase in the overall number of affordable units.

RESPONSE: The standards included in the rule are minimum standards and municipalities have always been permitted to provide higher density bonuses as an incentive for developers to provide higher set-asides provided a realistic opportunity is created. In adopting zoning to address a public benefit such a providing affordable housing, municipalities must give due consideration to both the costs of providing the public benefit and the benefits being provided to those on whom it relies to assist in accomplishing public policy goals. Density bonuses, for example, should be adequate enough to offset the costs of producing affordable housing yet not be so great as to result in the unintended consequence of excessive windfall profits to developers. With this balance in mind, the Council will consider a rule amendment to reflect minimum presumptive densities for inclusionary zones based on SDRP Planning Areas

COMMENT: The provision of compensatory benefits to developers for residential and mixed-use inclusionary developments that address growth share which are located in unsewered PA 3, 4, 4B and 5 areas should be prohibited, unless these projects utilize clustering, lot averaging or open space ratio approaches that prevent sprawl. Furthermore, the rule's bonus unit provisions, if applied to unsewered PA 3, 4, 4B and 5 areas, appear inconsistent with DEP septic density standards based on nitrate dilution, unless the clustered development or redevelopment is served by alternative, resource protective community sewage treatment facilities approved by DEP. The requirement that one bonus unit be provided for every affordable unit within planned redevelopment or revitalization areas should be waived if densities have already been maximized as a result of extensive community planning and visioning initiatives which led to the adoption of plans and ordinances that implement designated centers and/or endorsed plans.

RESPONSE: The Council encourages municipalities to utilize clustering, lot averaging and other zoning tools to accommodate affordable housing opportunities wherever practical. In a future rule amendment, the Council will strengthen the rule to make these provisions, along with attached structure types, a required consideration for inclusionary zoning, especially in un-sewered PA 3, 4, 4B and 5 areas. While the Council recognizes that an extension to a sewer service area is not possible for some locations of the State, septic systems may be possible in accordance with DEP's regulations. DEP has granted more than 100 permits for small and innovative technology wastewater treatment plants and is actively working with the Pinelands Commission to test the use of individual innovative septic treatment units on one-acre residential parcels. Municipalities may work with DEP to safely apply such technology to provide affordable housing in other parts of the State. Payment in lieu options also provide opportunities to fund affordable housing elsewhere in the municipality when on-site production is not practical. In municipalities where there are also sewered areas, higher densities and set-asides could be used as to offset growth share that results from development in un-sewered areas. Municipalities have a great deal of flexibility in crafting zoning and when inclusionary zoning is used, the obligation may be fulfilled with a higher set-aside and density on some sites or zones and a lower density and lower or no set-aside on other sites or zones. Finally, it should be noted that municipalities have a myriad of options available for meeting their affordable housing obligations, of which inclusionary development is only one option. Additional options that do not rely on new inclusionary development include the market to affordable program which allows a buying down of existing market-rate units, reconstruction of existing units, municipally sponsored rental programs and accessory apartment programs. Programs available to municipalities are detailed in N.J.A.C. 5:97-6.

COMMENT: COAH should adopt the recommendation of the Applegate and Thorne-Thomsen report and establish either a minimum density bonus or a minimum presumptive density as an incentive to build affordable housing. The report also suggested at page 72 that COAH "[l]ink more generous cost offsets to greater and increased affordability." That recommendation has not been implemented, and COAH should state why that is.

RESPONSE: The rule will be the subject of a future amendment wherein the Council will consider minimum presumptive densities for inclusionary zones based on SDRP Planning Areas. The future amendment will also specify that financial incentives may provide for a range of opportunities to induce affordable housing production at varying levels and that additional incentives to subsidize the creation of affordable housing available to very-low income households may be included in the zoning ordinance. Very low-income units are eligible to result in bonuses that will provide an additional incentive for municipalities to offer more generous cost offsets that will result in greater and increased affordability.

COMMENT: To assure that municipal inclusionary zoning ordinances create realistic housing opportunities, COAH's regulations must prescribe a maximum set-aside of no more than 20 percent for ordinances that permit construction of multifamily housing at six dwelling units per acre or higher and at lower levels for ordinances that permit lower densities. A municipality can easily prevent construction of affordable housing by adopting an "inclusionary zoning ordinance" that mandates an excessive set-aside for low and moderate income housing or by leaving the set-aside level as a discretionary decision to be negotiated case by case. Historically, COAH has responded by prescribing maximum set-asides that constrain but do not eliminate local decision-making. N.J.A.C. 5:93-5.6(b). The current proposed rules do not prescribe any such maximum or standards for whether the locally determined set-aside is excessive. This does not satisfy COAH's statutory mandate to establish criteria that assure that municipal fair share plans create realistic housing opportunities. The New Jersey courts have considered what level set-aside satisfies the constitutional mandate. They have consistently upheld a 20 percent maximum and struck down higher numbers; *Urban League of Essex County v. Mahwah*, 207 *N.J. Super.* 169, 200-209 (Law Div. 1984) (rejecting 25 percent set-aside); *Van Dalen v. Washington Township*, 232 *N.J. Super.* 205 (Law Div. 1989) (striking down 50 percent set-aside). As outlined in the report of COAH's consultant, Inclusionary Housing Lessons from the National Experience, New Jersey has been extremely successful at producing affordable housing through inclusionary development the provides housing for both low and moderate income households with maximum set-asides of 20 percent. By contrast, the report identified no program in the country that has generated any significant low income housing with higher set-asides. Two practical considerations strongly militate in favor of maintaining the 20 percent maximum set-aside

established in COAH's first and second round regulations. First, a higher set-aside increases the amount of private subsidy that must be provided. It may well make production of affordable housing financially prohibitive. Even if does not, it may well increase the cost of housing to the purchasers of the market-priced units, rendering those units unaffordable to near-poor or middle income households. Second, higher set-asides make marketing the market-priced units difficult or impossible. Based upon empirical research and practical experience, purchasers of market priced units are reluctant to spend their life savings to purchase homes in projects in which too many of the units will be occupied by lower income households or racial minorities. Indeed, experience with "blockbusting" and research on so-called neighborhood "tipping points" indicates that when neighborhoods reach the level of somewhere between 20 and 30 percent lower income households or racial minorities, homeowners will actually flee neighborhoods in which they previously resided. D. Card, A. Mas, J. Rothstein, "Tipping and the Dynamics of Segregation," (National Bureau of Economics Research Working Paper April 2007) reprinted at emlab.berkeley.edu/users/card/papers/tipping-dynamics.pdf (access March 18, 2008); M.O. Chandler, "Obstacles to Housing Integration," in G. Galster and E. Hill, The Metropolis in Black and White pp. 286-305 (1992).

RESPONSE: The Council will propose a rule amendment in the near future that establishes minimum presumptive densities for inclusionary zones based on SDRP Planning Areas. While some courts may have struck down set-asides greater then 20 percent under the particular facts presented in those cases, the court in *Mt Laurel II* did not determine that set-asides greater then 20 percent are inappropriate; the question in each case is whether the proposed zoning will provide the requisite realistic opportunity. When a municipality exercises its police power through zoning revisions that are specifically designed to achieve a Master Plan goal of addressing public policy and constitutionally required affordable housing obligations, it would be inappropriate not to ensure that the level of affordable housing obtained through re-zoning was commensurate with the level of density increase provided. There may be no financial reason why property that was profitable at two-acre zoning with no affordable housing requirement can not remain profitable at four units per acre (an 800 percent increase in density) and an affordable set-aside that is significantly greater than 20 percent. By definition, low and moderate income households represent 40 percent of the State's total households and inclusionary development is development that is newly constructed where no previous residents existed. Consequently, the Council rejects the commenter's remarks indicating that "when neighborhoods reach the level of somewhere between 20 and 30 percent lower income households or racial minorities, homeowners will actually flee neighborhoods in which they previously resided."

COMMENT: COAH should give an additional density bonus to developers who build at least six units per acre, and direct at least 25 percent of their affordable housing to households at or below 30 percent of median income.

RESPONSE: Density bonuses are not granted by the Council. They are granted by municipalities as part of local zoning provisions that are designed to create a realistic opportunity for the production of affordable housing. The Council certainly encourages municipalities to grant additional density bonuses to increase the number of affordable units produced and/or reach a deeper level of affordability.

COMMENT: COAH is requested to make available evidence available to the public that demonstrates that the compensatory benefits provided in the proposed rules will adequately off-set the cost of constructing growth-share affordable housing or providing payments in-lieu of construction associated with both residential and non-residential development. Although the cyclical nature of the economy is recognized by the draft COAH rules, it is nonetheless important that growth share obligations are not so onerous to developers, municipalities, tax-payers and the State that they act as a deterrent to much needed economic and residential growth in this recessionary period. The needs of low-and moderate income residents will not be served if the mechanisms for addressing affordable housing need cannot be implemented due to fiscal constraints. It is recommended that COAH pursue information and guidance from banks and lending institutions, economists and other experts familiar with development financing and make this information available to the public. A detailed evaluation of the fiscal impacts of the rules on municipal budgets is also needed, since there are significant concerns regarding the ability of municipalities to bear the costs of providing affordable housing associated with development that occurred since January 2004 as required by the proposed rules. The broader fiscal impacts of added municipal services and public school costs resulting from new development should be taken into

consideration as well.

RESPONSE: The Council has provided a significant body of evidence demonstrating that the compensatory benefits included in the rule proposal will be adequate to offset affordable housing production and payments in lieu thereof. Appendix F to the proposed rules includes two detailed reports. One, entitled Inclusionary Housing: Lessons from the National Experience, discusses observations made at the national level. The other, entitled Compensatory Benefits To Developers For Provision Of Affordable Housing, provides a detailed analysis of the anatomy of inclusionary zoning in New Jersey and will be amended in the near future to address concerns raised by the commenter. Both of these reports included best practices and information obtained from banks and lending institutions, economists and other experts familiar with development financing. The broader fiscal impacts of added municipal services and public school costs resulting from new development is an issue that is relevant to all development that is approved by municipal planning boards and not just affordable housing development. Municipalities may also collect development fees as set forth in N.J.A.C. 5:97-8. The rule will also be amended and provide a bonus for every affordable housing unit approved between December 20, 2004 and June 2, 2008.

COMMENT: The Pinelands Development Credit (PDC) program is a long-standing land preservation tool that has been used to great effect to ensure protection of the unique and important ecological resources of the Pinelands Area. However, costs associated with the growth share obligation and the incentives envisioned under N.J.A.C. 5:97-6.4 have the potential to adversely affect the feasibility of the PDC program. This is due to the fact that, unless carefully designed, it may be difficult to simultaneously provide for significant PDC obligations and affordable housing for the same project. Furthermore, awarding "bonus" units as proposed under COAH rules conflicts with the current CMP requirement to acquire a PDC for higher than base-density development in the Regional Growth Area. To resolve these conflicts, COAH should recognize development limitations under the current provisions of the CMP and provide complementary allowances to minimize obligations that potentially reduce the use of PDCs.

RESPONSE: The Pinelands Commission has already taken steps towards supporting affordable housing by exempting affordable units from PDC requirements in several cases. Municipalities may supplement this effort through the use of development fees to assist the developers of affordable housing with acquiring PDCs. The Council will discuss the issues further with Pinelands staff to work on mutually acceptable guidance that can be provided to municipalities to ensure that inclusionary zoning ordinances in the Pinelands Growth Areas will be carefully designed to provide for both PDC obligations and affordable housing obligations.

COMMENT: The Council should not adopt a complicated set of provisions with specific compensatory benefits for developers for inclusionary zoning (including economic limitations and imposing economic costs on municipalities) and at the same time, simultaneously adopt a provision that permits the developer to appeal the economic feasibility of the inclusionary zoning ordinance. The provision to permit a developer to appeal the economic feasibility of inclusionary zoning should not be adopted by the Council, unless the Council eliminates the mandatory provisions for inclusionary zoning ordinances. These include (1) the provision requiring the municipality to provide for one additional market-rate unit for every affordable unit required on site as per N.J.A.C. 5:97-6.4(b)2i, the mandatory minimum gross density requirements of N.J.A.C. 5:97-6.4(b)2iii, the additional zoning incentives identified at N.J.A.C. 5:97-6.4(b)4, the development size threshold as per N.J.A.C. 5:97-6.4(b)8, the provision for an increase in permitted floor area in non-residential districts as per N.J.A.C. 5:97-6.4(b)9, and the mixed use residential density increase and increase in permitted floor area as per N.J.A.C. 5:97-6.4(b)10. Either the Council is sure that the compensatory benefits established for the revised inclusionary zoning provisions are adequate to address economic feasibility, or it isn't. COAH should not adopt a regulation requiring the municipality to defend inclusionary zoning ordinance requirements that are based upon COAH's complex maze of regulations that may be attacked by a developer. As such, N.J.A.C. 5:97-6.4(b)11 should deleted from the proposed regulations.

RESPONSE: The rule will be amended in the near future to delete the appeal provision and to provide for minimum presumptive densities and maximum presumptive set-asides by SDRP planning area.

COMMENT: As proposed, the rule is not sustainable and it's not economically feasible. You have to work with incentives. If you were to say why don't you cluster your houses, many developers would prefer to do that. But if a developer goes to the DEP and has to get a treatment works permit, it may be years, 10 years.

RESPONSE: The role of the Council is to provide a general framework for municipalities to follow in crafting zoning provisions that provide a realistic opportunity for the creation of affordable housing. The rule will be amended in the near future to indicate that tools such as clustering, and flexible bulk standards must be considered at the municipal level in the context of creating a realistic opportunity for affordable housing to be produced. Additionally, the Council's staff has been working closely with DEP staff to help expedite approvals affecting affordable housing developments where possible.

COMMENT: Inclusionary housing may present a public health and safety emergency. Inclusionary development will be the primary means by which municipalities will reach their affordable housing projections under the proposed N.J.A.C. 5:97. The commenter disagrees with this approach and instead encourages additional incentives for redevelopment, rehabilitation, and rent control policies. Based on a worst case the scenario, to reach the Statewide goal of 115,000 units at a growth-share ratio of one affordable unit for five market rate units, at an average of three residents per unit (both market and affordable), an estimated 1.8 million people would need to move to New Jersey to fill the 578,000 market rate units and 115,000 affordable units. Some towns do not have the potable water supplies and sewerage capacity to handle this projected growth, especially not by 2018. It must be required that towns meet all affordable housing obligation based on actual growth, not projected growth. The seminal *Mt. Laurel* decision only required that if a town grows it should have to provide a fair share of affordable housing; it did not force towns to develop based on projected growth. Inclusionary housing should not be the primary policy objective to meet the goal of providing 115,000 affordable units Statewide. Incentives for municipal initiatives, redevelopment, rehabilitation, and a better accounting of filtering could meet the target levels of affordable units with less risk to the public health and safety of current residents with overcrowded municipalities, an over-stressed, aging and inadequate infrastructure. Where existing capacity is limited but available, it should solely be dedicated to providing affordable units, over-riding inclusionary growth, so that real affordable units can be providing without wasting infrastructure capacity on unwanted and unneeded market rate units. The proposed level of inclusionary development also defies the State's commitment to meet definitive global warming targets by 2020.

RESPONSE: Inclusionary zoning is but one of many mechanisms available to municipalities to provide affordable housing and the Council certainly encourages redevelopment and rehabilitation. Rent control policies are currently outside the scope of the Council's authorizing legislation but the commenter's suggestion will be explored further. Historically, only about half of the affordable housing provided has been through inclusionary zoning and some affordable housing developments include set-asides that exceed 20 percent. Therefore, the assumption that 578,000 market-rate units will result from the delivery of 115,000 affordable housing units is not valid. NJDLWD projects growth to be 280,000 households between 2004 and 2018. The rule does not force municipalities to grow but rather requires appropriate affordable housing delivery mechanisms commensurate with growth if it does occur. The actual obligation will be measured against actual growth. The Council agrees that when existing capacity is limited but available, it should be dedicated to providing affordable units. While the Council also recognizes that an extension to a sewer service area is not possible for some locations of the State, septic systems may be possible in accordance with DEP's regulations. DEP has granted more than 100 permits for small and innovative technology wastewater treatment plants and is actively working with the Pinelands Commission to test the use of individual innovative septic treatment units on one-acre residential parcels. Municipalities may work with DEP to safely apply such technology to provide affordable housing in other parts of the State.

COMMENT: Council should clarify that where there is a mix of ownership and rental components included in a project, the rules do not require the developer to "fully integrate" the units into the development. If the affordable component is to be rental, and the market component is for sale, a stand alone configuration is necessary. Additionally, this is true if there is a mix of product types, or if part of the project is age-restricted and the affordable unit not.

RESPONSE: Some affordable rental units are simply for sale units that have been retained as rental units by developers of inclusionary developments. In other instances, the Council believes that its use of the qualifier "to the extent feasible" is sufficient to address the commenter's concern.

COMMENT: The Econsult assumptions and limitations are so problematic that no conclusions can be drawn about appropriate incentives. The Appellate Court decision required COAH to develop meaningful incentives. Instead, COAH's consulting report, Compensatory Benefits to Developers for Provision of Affordable Housing, has concluded that imposing a 20 percent set-aside, without additional market rate housing units, might not be too much of a deterrent in the best case scenario. The production of affordable housing cannot depend on the best case scenario in the most robust housing market. COAH must create an incentive that will produce affordable housing in most housing markets.

RESPONSE: The importance of the starting profit margin and internal rate of return is to establish the profitability level that needs to be achieved, net of both the affordable housing obligation and the offsetting density bonus. As noted in footnote 25 of page 20, whether the IRR is set at 15 or 20 or 25 percent (or higher), this does not materially change the amount of incentives that are needed to offset the affordable housing obligation. However, to address the commenter's concern, the report will be revised in a future rule amendment to assume a higher starting profit margin and internal rate of return.

COMMENT: Urban municipalities often permit greater residential density than do suburban municipalities. In many instances the lowest density zone in an urban municipality will permit greater density than will the highest density suburban zone. For example, in a low density R-1 residential zone in our urban municipality, one and two family houses are permitted on 25-foot by 100-foot lots, which translates to a maximum permitted density of 35 units per acre. Where high residential densities are permitted as-of-right, it is sometimes the case that builders do not utilize their full as-of-right density permissions. The density that is actually built will be determined by market forces. In instances where there is a market based decision to underutilize density permission, a density bonus does not provide a benefit to the builder. The rule focuses on easing density restrictions and fails to discuss situations where density bonuses will not increase the value of the project to the developer. For example, in the redevelopment context, additional density will not provide meaningful value to a developer. The density of the site would already be effectively maximized in the redevelopment plan in order to make the project viable. COAH should identify an alternate compensatory benefit to provide to builders, which does not create a cost burden to municipalities and does not divert municipal revenues.

RESPONSE: The Council recognizes that the impact of compensatory benefits in the form of density bonuses is significantly different when comparing urban markets to suburban markets. The Council will amend the rule in the near future to allow zoning ordinances to permit a reduced set-aside of 15 percent of the total number of units in inclusionary urban rental developments when the density permitted is 25 units per acre or more. In addition, the Council will amend the rule in the near future to provide added incentives for affordable housing to be located in smart growth areas near transit and in redevelopment areas.

COMMENT: COAH should provide for high density housing that will allow the private sector to use land efficiently and provide for the needs of New Jersey's households.

RESPONSE: The Council does not have jurisdiction over local zoning. However, if municipalities seek to provide affordable housing through inclusionary zoning, the Council does have the ability to require minimum presumptive densities and density increases to validate the realistic opportunity presented by the zoning proposed. The Council will amend this rule in the near future to establish minimum densities to be applied in inclusionary zones. Minimum presumptive densities will be based on sound planning principles, including the use of compact forms of development to ensure the efficient use of land, and be related to planning areas identified by the State Planning Commission.

COMMENT: Municipal flexibility must be granted, allowing towns to decide what proportion of affordable to market rate units would best suit their community. For example, a downtown area may be served better by one affordable to two market ratables, because the existing employment and transportation opportunities offer the chance for

such an affordable density, while away from the downtown area, the municipalities should be able to require a one in five affordable share. The common theme is that each town is different and this universal approach of requiring growth will not work.

RESPONSE: Generally, increases in density in areas that have adequate infrastructure to support growth are the most efficient means to produce affordable housing with the least impact on public budgets and are the most efficient use of land. The rule is designed to give municipalities significant flexibility by pointing out that inclusionary zoning may apply to all or some zones within the municipality. Additionally, density bonuses may be exceed the minimum prescribed by the Council and an increased set-aside may be required, provided a realistic opportunity is created. This flexibility would allow a municipality to capture more affordable housing in zones or districts deemed most suitable by local planning officials in exchange for lower or no requirements in other zones or districts. This level of comprehensive planning enables municipalities to carefully craft land use regulations to attain a variety of public goals including (that is, both economic development and the provision of affordable housing) without mutual exclusivity.

COMMENT: The construction of an owner-occupied home on a single lot should not incur a growth share obligation or be charged a fractional payment in lieu of construction of $ 17,500. A fee this great will prevent people from building their own homes.

RESPONSE: The proposed rule recognizes the commenter's concern by requiring municipalities to set forth a development size threshold below which affordable units would not be required. Such a threshold must be based on whether or not the density and set-aside required by the zoning ordinance could result in the provision of at least one affordable unit on-site, for example, the individual parcel would accommodate less than five dwelling units where the zoning requires a 20 percent set-aside. Sites falling below such threshold can not be required to provide affordable housing or make a payment in lieu. However, the ordinance may require the payment of a development fee pursuant to N.J.A.C. 5:97-8.3.

COMMENT: The incentives in the rules to encourage affordable housing, the admission of density and then other additional incentives that are decided, but not specified, are raising questions. Developers are saying I can get one additional market unit when I should be able to get more, too, because the rule says "other additional incentives." In the past this was called "contract zoning" and was not allowed.

RESPONSE: The rule will be amended in the near future to provide greater clarity as to the incentives to be provided.

COMMENT: The revised COAH regulations make numerous assumptions regarding minimum densities that are inappropriate not only from a community character and community impact standpoint, but from an available or proposed infrastructure standpoint as well. Municipalities should not be forced to increase densities in an effort to address excessive projections of growth.

RESPONSE: Minimum densities and density bonuses are necessary parts of ensuring that inclusionary zoning is financially feasible and presents a realistic opportunity for the production of affordable housing. Properly crafted inclusionary zoning will provide a realistic opportunity to capture affordable housing as naturally occurring growth occurs. The Council does not believe that any harm to community character will result. Additionally, it should be noted that where the availability of infrastructure is an issue, increased densities will be a benefit in that compact forms of development result in lower infrastructure costs.

COMMENT: The method of funding this is completely wrong. It's got to come somewhere from the government to say that everybody pays for this. You're putting it on one sector of the population to cover all these affordable units. Nobody's going to go and pay $ 10,000 or $ 17,000 or over $ 40,000 for a payment in lieu. You can't build it into the products anymore. We're in a declining market.

RESPONSE: Further increasing density is a tool that municipalities have available to both maximize affordable

housing production and ensure efficient and compact land uses while simultaneously minimizing the need for state and federal subsidization. It is municipal land use decision making that dictates the extent to which increased density will be used. The proposed rule called for a density increase of one market-rate unit for every affordable unit that was provided on site. This standard was set as a minimum to determine financial feasibility in consideration of the opinion taken by the court in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007), regarding the need for compensatory benefits. The rule will be the subject of a future amendment wherein the Council will consider minimum presumptive densities for inclusionary zones based on SDRP Planning Areas. It should be noted that municipalities have a myriad of options available for meeting their affordable housing obligations, of which inclusionary development is only one option. Additional options that do not rely on new inclusionary development include the market to affordable program which allows a buying down of existing market-rate units, reconstruction of existing units, municipally sponsored rental programs and accessory apartment programs. Programs available to municipalities are detailed in N.J.A.C. 5:97-6. Lastly, the commenter should note that a variety of public, State and Federal subsidies are available to support affordable housing. Municipalities may also collect development fees as set forth in N.J.A.C. 5:97-8.

COMMENT: The rules rely too much on using inclusionary zoning projects to meet the affordable housing need, granting one affordable housing unit for every five market rate units. This is an incentive for sprawl and overdevelopment. Towns needs to have more opportunities to meet their obligations through alternative means, such as affordable housing trust funds, buying foreclosed properties, and better use of set-asides for new developments. Under the proposed rules, the Statewide obligation is 115,000. If this were to be met using inclusionary zoning exclusively, it would generate over 600,000 units over the next 10 years when New Jersey has averaged about 30,000 units a year in the past - half the rate of growth that would be needed.

RESPONSE: Municipalities have a myriad of options available for meeting their affordable housing obligations, of which inclusionary development is only one option. Additional options that do not rely on new inclusionary development include the market to affordable program which allows a buying down of existing market-rate units, reconstruction of existing units, municipally sponsored rental programs and accessory apartment programs. Programs available to municipalities are detailed in N.J.A.C. 5:97-6. To enhance the effectiveness of inclusionary zoning, the Council has determined that minimum densities within inclusionary zones are necessary to support sustainable communities in a compact form that encourages the efficient use of land. Therefore, the Council will amend the rule in the near future to provide guidance on capturing affordable housing opportunities when variances are granted, and higher set asides that can be captured through the use of higher density increases and carefully crafted inclusionary zoning.

COMMENT: The commenter applauds the new standard for "payments in lieu." By establishing a standard for each COAH region, you will end the problematic practice of each local municipality setting its own price.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: Rezoning parcels with a 20 percent set-aside will do no more for a municipality that satisfy the growth share obligation these projects create. Therefore, the commenter supports the right of a municipality to impose a set-aside greater than 20 percent.

RESPONSE: The rule does not preclude municipalities from zoning for higher density increases with higher affordable housing set-asides provided a realistic opportunity is created. Additionally, the Council is currently considering a rule amendment that would provide minimum presumptive densities and maximum presumptive set-asides and would permit set-asides in excess of 20 percent depending on planning area and sewer availability.

COMMENT: The Borough supports regulations that permit the Borough to pursue what it deems the most appropriate solutions for providing its fair share, without unreasonable cost burdens having to be passed on the Borough's tax payers. The Borough opposes fixed density inclusionary zoning mandates that are inconsistent with the

scale and character of the Borough's village and small town atmosphere. COAH's rules are inflexible and force the municipality to accommodate mandated growth in the form of inclusionary zoning in order to comply with COAH's growth projections in order to receive substantive certification without substantial taxpayer subsidies

RESPONSE: Municipalities have a myriad of options available for meeting their affordable housing obligations, of which inclusionary development is only one option. Additional options that do not rely on new inclusionary development include the market to affordable program which allows a buying down of existing market-rate units, reconstruction of existing units, municipally sponsored rental programs and accessory apartment programs. Programs available to municipalities are detailed in N.J.A.C. 5:97-6. Many of these programs not only fit with but are in fact reflective of the scale and character of existing community atmospheres. However, inclusionary development relies on the provision of modest density increases to private market developers as an incentive to provide affordable housing at little or no cost to the municipality. Carefully crafted inclusionary zoning ordinances and diligent design work with developers often result in outstanding mixed income developments that result in an amenity that benefits the community as a whole. In response to the court in the matter of *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super*. 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007), specific guidance on minimum standards for the relationship between density and affordable housing set-asides has become essential to demonstrate that zoning, if chosen by the municipality as means of delivering affordable housing, represents a realistic opportunity.

COMMENT: Will COAH write a model ordinance that will allow density applications to go before the Planning Board? Currently, the MLUL requires that the Board of Adjustment decide all development applications with density variances, but COAH expects the municipality to write an ordinance that includes the allowable density so the developers will be able to apply to the Planning Board. Note, the municipality might want to see a sliding density that increases the density from one additional unit for each affordable unit to a density beyond the 20 percent set aside.

RESPONSE: The density increase required in N.J.A.C. 5:97-6.4(b)2 is a minimum standard and municipalities are not prohibited from granting larger density increases and requiring larger set-asides. It is important to note that the density increases required to validate the financial feasibility of affordable housing requirements would be permitted by zoning and therefore not require any variances. A model ordinance was prepared and published on the Council's web page when the original set of third round rules were adopted. A revised ordinance will be made available subsequent to adoption of the proposed rule. The issue of providing variable presumptive densities and corresponding affordable set-asides will be addressed in the revised model. The density increase required in N.J.A.C. 5:97-6.4(b)2 is a minimum standard.

COMMENT: Inclusionary zoning allows the zoning option of producing the affordable units on site, elsewhere in the community or as an in lieu payment. The term "additional" should be struck since if the developer provides affordable units elsewhere in the municipality the financial incentive can be reduced equal to one half of a market rate unit for every affordable unit required.

RESPONSE: The use of the term "additional" is in reference to compensatory benefits and incentives that are in addition to density increases that are permitted in the ordinances. It should be noted that the rule will be amended in the near future to delete reference to a reduced compensatory benefit for making a payment in lieu of construction.

COMMENT: The density bonus that grants five market units for every affordable unit is not based on any financial analysis and doesn't make a distinction between whether the market units are $ 1 million McMansions, which generate a large profit, or $ 350,000 condos, which generate a smaller profit. The bonus should be based on the size and cost of the market rate units built, rather than on a blanket five to one scale. The proposed growth share system penalizes towns that are trying to build moderately priced housing and smaller houses and rewards McMansion developments. Because the same formula is used whether the area is rural or urban, rich or poor, a small cottage or a sprawling McMansion accrue the same obligation. Building a modest duplex in Trenton counts as two units, while Vernon Hill's house, which is around 40,000 square feet, only counts as one unit for Moorestown - we are equating the average family home with a

house that is bigger than a high school. McMansions take more resources to build, use up larger plots of land, require additional services such as roads and police to cover larger areas, and do not support the tenets of smart growth. These large trophy homes also generate the need for more affordable housing than a modest price home because they use up more natural resources - for example, an average one-family home uses 250 gallons of water per day, while a 5,000 square foot house uses about 500 gallons per day - and require more employees, such as gardeners, housekeepers, and au pairs. Accordingly, the commenter recommends that the affordable housing obligation be based not only on the number of homes, but the size and square footage of those homes. Since the average one-family home is still less than 3,000 square feet, the obligation should be calculated as one unit for up to 2,500 square feet and then an additional unit for every additional 2,500 square feet. Therefore, a 5,000-square-foot home would result in a two unit obligation.

RESPONSE: The Council has considered many methodological approaches to determining and allocating affordable housing need. While the commenter's approach is appreciated, the Council will retain the current approach, which it believes appropriately addresses the regional and Statewide need. The commenter's suggestions are incorporated in the Council's development fee regulations, which allow municipalities to collect a larger amount from higher priced homes than from lower priced homes. In addition, the Council will amend its regulations in the near future to provide incentives for affordable housing built within transit oriented developments and redevelopment areas.

COMMENT: This section does not explain how the criteria for inclusionary zoning relate to the Pinelands Development Credit program and rules. In its current form, the Pinelands CMP and certified municipal ordinances only permit certain higher densities to be built with the purchase of Pinelands Development Credits (PDCs). How will the Council evaluate this zoning in terms of satisfying a municipality's fair share obligations? This section needs to be clarified in consultation with the Pinelands Commission.

RESPONSE: The Council is sensitive to the importance of the viability of the PDC program and has discussed this matter with the Pinelands Commission. Pinelands municipalities which seek substantive certification from COAH will have to demonstrate in their ordinances at what point and to what extent PDCs are required for increases above base density. The Council's understanding is that the Pinelands Commission may exempt affordable units from the PDC requirement. Bonus densities will be possible once PDC requirements for a portion of the market rate units are satisfied.

COMMENT: The anticipated affordable housing contributions for developments should be revised. If municipalities require affordable housing contributions at the 4:1 and 16:1 ratios, the development industry cannot withstand making these contributions. The regulations will result in developers losing approximately much of their expected profit, and there are no meaningful compensatory benefits provided for under the regulations to offset the cost of the affordable housing contribution.

RESPONSE: The Council will propose an amendment in the near future to establish minimum presumptive densities and maximum presumptive set-asides for inclusionary zones based on SDRP Planning Areas. The rule will also provide reduced set-asides for rental housing in qualifying census tracts.

COMMENT: While non-residential development could be exempted from the full payment of an in-lieu amount, this exemption simply forces the issue of increased density. This regulation will alter the municipal zoning ordinances and undermine the concept of home rule. With regard to the inclusionary option, municipalities are forced to give increased density over that which is permitted under the current zoning. This regulation effectively alters the municipal zoning ordinance across the entire municipality (non-residential and residential) and undermines the concept of home rule.

RESPONSE: Generally, increases in density in areas that have adequate infrastructure to support growth are the most efficient means to produce affordable housing with the least impact on public budgets and are the most efficient use of land. The rule is designed to give municipalities significant flexibility by pointing out that inclusionary zoning may apply to all or some zones within the municipality. Additionally, density bonuses may exceed the minimum prescribed by the Council and an increased set-aside may be required. This flexibility would allow a municipality to

capture more affordable housing in zones or districts deemed most suitable by local planning officials in exchange for lower or no requirements in other zones or districts. This level of comprehensive planning enables municipalities to carefully craft land use regulations to attain a variety of public goals including (that is, both economic development and the provision of affordable housing) without mutual exclusivity. Further, the commenter should note that the Appellate Division in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing,* 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied,* 192 N.J. 71 (2007), required the Council to establish regulations that provide a compensatory benefit to developers in exchange for the provision of affordable housing.

COMMENT: Any inclusionary development opportunities that require zoning changes need to have these zoning changes adopted at the time of submission of the municipality's fair share housing plan. Thus, the municipality is forced to zone for development density it may never need. The idea behind the growth share round is that municipalities are only required to build affordable housing based on the rate at which they grow. The requirement that the zoning be in place prior to the growth is antithetical to the philosophy of the growth share round. Once the zoning is in place, regardless of whether or not the growth ever materializes, municipalities are in a bind since the zoning allows the owner to build a certain amount of units by right at the time of the zoning change. Thus, the builder at any point would be allowed to build at a density to cover anticipated growth, but this growth (and thus affordable housing requirements) may never occur. This provision will actually accelerate unwanted growth and create tremendous hardship for the taxpayers.

RESPONSE: The commenter should note that the Fair Housing Act requires inclusionary zoning ordinances to be adopted within 45 days of substantive certification. The Council believes that good planning includes establishing zones that can accommodate present and future needs for affordable housing. To delay the adoption of inclusionary zoning until after growth has occurred would be contrary to sound planning in that any such zoning would in essence be reacting to market-driven growth. The Council believes that increased density to accommodate affordable housing in appropriate growth areas of the State will result in the same amount of growth but with a more compact and efficient use of land in keeping with the smart growth principles embodied in the State Plan.

COMMENT: Residential development generating such a high growth share obligation will create a shortfall that must be paid by property taxpayers, since either the proposed development fee, or the proposed payments in lieu, are insufficient to pay for municipal construction of units, since the proposal understates construction costs and overstates the average sale price of units.

RESPONSE: Generally, increases in density in areas that have adequate infrastructure to support growth are the most efficient means to produce affordable housing with the least impact on public budgets and are the most efficient use of land. The rule is designed to give municipalities significant flexibility by providing that inclusionary zoning may apply to all or some zones within the municipality. The rule also includes a reasonably accurate reflection of both construction costs and the average sales price of affordable units at the regional level. Additionally, density bonuses may exceed the minimum prescribed by the Council and an increased set-aside may be required. This flexibility would allow a municipality to capture more affordable housing in zones or districts deemed most suitable by local planning officials in exchange for lower or no requirements in other zones or districts. This level of comprehensive planning enables municipalities to carefully craft land use regulations to attain a variety of public goals including (that is, both economic development and the provision of affordable housing) without mutual exclusivity and without subsidy from taxpayers. Additionally, municipalities have a myriad of options available for meeting their affordable housing obligations, of which inclusionary development is only one option. Additional options that do not rely on new inclusionary development include the market to affordable program which allows a buying down of existing market-rate units, reconstruction of existing units, municipally sponsored rental programs and accessory apartment programs. Programs available to municipalities are detailed in N.J.A.C. 5:97-6.

COMMENT: Many municipalities have experienced far too much development on constrained sites while developers produce far less affordable housing than was reasonably possible. It is imperative that COAH regulations facilitate the ability of municipalities to produce as much affordable housing as is practicable with as modest increases

in density as possible.

RESPONSE: Municipalities have a myriad of options available for meeting their affordable housing obligations, of which inclusionary development is only one option. When inclusionary zoning is used, the obligation may be fulfilled with a higher set-aside and density on some sites or zones and a lower set-aside and density on other sites or zones. Additional options that do not rely on new inclusionary development include the market to affordable program which allows a buying down of existing market-rate units, reconstruction of existing units, municipally sponsored rental programs and accessory apartment programs. Programs available to municipalities are detailed in N.J.A.C. 5:97-6. Increasing density is perhaps the most significant tool that municipalities have available to both maximize affordable housing production and ensure efficient and compact land uses. The Council's rules require inclusionary development to meet site suitability criteria that take DEP regulations into consideration to ensure that proposed development will not be directed toward constrained sites. However, it is municipal land use decision making that dictates the extent to which increased density will be used. The proposed rules called for a density increase of one market-rate unit for every affordable unit that was provided on site. This standard was set as a minimum to determine financial feasibility in consideration of the opinion taken by the court in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 N.J. 71 (2007) regarding the need for compensatory benefits. The rule will be the subject of a future amendment wherein the Council will consider minimum presumptive densities for inclusionary zones based on SDRP Planning Areas and make it clear that different zones within each municipality may have different density increase and set-aside requirements provided they are applied uniformly throughout each zoning district.

COMMENT: The provision of compensatory benefits to developers for residential and mixed-use inclusionary developments that address growth share which are located in unsewered PA 3, 4, 4B and 5 areas should be prohibited, unless these projects utilize clustering, lot averaging or open space ratio approaches that prevent sprawl. COAH should provide evidence that demonstrates that the compensatory benefits set forth within the proposed rules will adequately off-set the cost of constructing growth-share affordable housing or providing payments in-lieu of construction associated with both residential and non-residential development. A detailed evaluation of the fiscal impacts of the rules on municipal budgets is needed, as there are significant concerns regarding the ability of municipalities to bear the costs of providing affordable housing associated with development that has occurred subsequent to January 2004 as required by the proposed rules. Additionally, an evaluation of the broader fiscal impacts of added municipal services and public school costs resulting from new development should also be prepared.

RESPONSE: Clustering, lot size averaging and other bulk standard revisions are included in the rule as additional considerations to be included in establishing cost reduction provisions in local ordinances. In a future rule amendment, the Council will strengthen the rule to make these provisions, along with attached structure types, a required consideration of inclusionary zoning, especially in un-sewered PA 3, 4, 4B and 5 areas. While the Council recognizes that an extension to a sewer service area is not possible for some locations of the State, septic systems may be possible in accordance with DEP's regulations. DEP has granted more than 100 permits for small and innovative technology wastewater treatment plants and is actively working with the Pinelands Commission to test the use of individual innovative septic treatment units on one-acre residential parcels. Municipalities may work with DEP to safely apply such technology to provide affordable housing in other parts of the State. The Council will propose an amendment in the near future that provides minimum presumptive densities for inclusionary zones based on SDRP Planning Areas.

COMMENT: The rules should be amended to include mandatory set asides, that is, if a builder is to build 100 market rate units then the obligation shouldn't be on the town to ensure 20 affordable units somewhere sometime but rather the obligation should be on the developer at the time of the development of those 100 units to provide 20 affordable units onsite and/or elsewhere consistent with these comments.

RESPONSE: The manner in which municipalities choose to address the need for affordable housing is a local decision. Municipalities have a myriad of options available for meeting their affordable housing obligations, of which inclusionary development is only one option. Additional options that do not rely on new inclusionary development

include the market to affordable program which allows a buying down of existing market-rate units, reconstruction of existing units, municipally sponsored rental programs and accessory apartment programs. Programs available to municipalities are detailed in N.J.A.C. 5:97-6. When inclusionary zoning is chosen as a mechanism to address the need, the rule clearly indicated that mandatory set-asides and density bonuses, along with optional payments in lieu of constructing required affordable housing units, must be set forth in the enabling zoning ordinance.

COMMENT: The commenter strongly opposes the provision that allows municipalities to require office or industrial developers to place affordable housing on their sites. This is bad policy for a number of reasons. The locations for office and industrial uses may not be appropriate for housing, and would be bad planning. Office and industrial developers are usually not equipped to build residential uses. Requiring residential uses on reclaimed land may be prohibitively expensive as compared to industrial uses. Also, this practice would represent an abdication of the municipal responsibility placed solely on the non-residential developer. It can also be viewed as exclusionary spot zoning that is contrary to the Fair Housing Act, which calls for low- and moderate-income housing to be integrated with market-rate housing throughout the community, not segregated. The regulations should also recognize that some non-residential development cannot benefit from an increase in FAR. For instance, for an office development, once the FAR crosses a certain threshold an increase in FAR will likely require at least some parking to be structured parking. Structured parking is very expensive and costs approximately $ 40,000 per parking space. Typical municipal ordinances require approximately 3.33 parking spaces per 1,000 square feet of office space. Therefore, each additional 1,000 square feet of increased FAR that requires structured parking costs the developer approximately $ 133.00 per square foot. In addition to structured parking, increased density or FAR often changes the construction methodology and materials used from light gauge steel to structural steel or reinforced concrete, and those come with higher costs. There may not be a market for the additional office space and, even if there is a tenant willing to occupy the space at a typical rent, the increase in costs will be many times the rent that may be charged for the office space. In sum, the potential rent to be gained does not justify the increased construction costs, which is why most office development in New Jersey does not have structured parking and is not located in mid-rise or high-rise buildings. The increased cost of structured parking requires that the developer get a higher rent to offset this increased cost, which averages $ 5.00 to $ 6.00 per square foot. If the non-residential developer cannot receive a financial benefit through an increase in FAR which is at least equal to the amount of the non-residential developer's affordable housing contribution, the affordable housing contribution should be reduced to enable the non-residential developer to receive a value at least as much as the affordable housing contribution made by the non-residential developer.

RESPONSE: Municipalities have a great deal of flexibility in crafting zoning and when inclusionary zoning is used, affordable housing requirements may be fulfilled with a higher set-aside and density on some sites or zones and a lower density and lower set-aside or no set-aside on other sites or zones as is appropriate for the land use goals recognized in the municipal master plan. This practice reflects proper planning by recognizing the differences in development capacity between various zones within a municipality. The Council believes that local planning boards will utilize the flexibility of this planning tool when deciding whether or how to use inclusionary zoning to address affordable housing needs and that inclusionary zoning will not be adopted in areas of a municipality where the provisions of the ordinance become unworkable. Additionally, the commenter should be advised that pending Assembly Bill A-500 would eliminate payment in lieu for non-residential sector and instead impose a Statewide development fee.

COMMENT: With regard to the issue of Growth Share ordinances, also referred to as inclusionary zoning ordinances in the opinion, the Court opinion is clear in that it is unconstitutional to require a developer to provide affordable housing without providing some type of compensable benefit to the developer providing the affordable housing. This approach is most often and traditionally has been in the form of the municipality providing a density bonus to a developer if that developer is including affordable housing units as part of it project. The Model Growth Share Ordinance that COAH published did not include any such requirements and, as such, most if not all growth share ordinances merely require a developer to either provide affordable units on site or make a payment in lieu of providing those units on-site or provide the affordable units off-site.

RESPONSE: The model growth share ordinance, along with other model documents prepared by the Council as

planning and implementation aids to municipalities, will be updated subsequent to the final adoption of third round rules.

COMMENT: Density bonuses for non-residential development will in turn require increased impervious surfaces, in conflict with the NJDEP Stormwater Regulations best management practices.

RESPONSE: The comment assumes that all non-residential zoning is based on a maximization of impervious coverage. The Council believes that many non-residential zoning districts establish floor area ratios and maximum impervious coverages that are less than what can realistically be accommodated without conflicting with NJDEP stormwater regulations. Zoning that can not be implemented due to the imposition of environmental regulations will not be deemed as presenting a realistic opportunity for the production of affordable housing and it is incumbent upon municipalities to adopt bulk standards that are realistic.

COMMENT: COAH should allow a phase-in of zoning for inclusionary development. Rather than beginning the cycle of speculative investment in these lands, zoning should cover a shorter forecast period and targeted to the "low" growth forecast (that is, two to three years) and should be supplemented as necessary in response to monitoring of growth.

RESPONSE: The Council believes that, as an affordable housing delivery mechanism that relies on the diminishing resource of land, zoning may not be phased. To allow the phasing of zoning would potentially result in municipalities having to re-zone sites for affordable housing production after other market-rate growth has occurred. This approach tends to be reactive rather than the proactive approach sought in the planning process. Additionally, municipalities utilizing such an approach could find themselves short of land that can be appropriately zoned if planning for affordable housing were to occur after market-rate development. Lastly, the FHA requires inclusionary zoning ordinances to be implemented within 45 days of substantive certification.

COMMENT: There should be an exemption for non-profit organizations to inclusionary zoning ordinances.

RESPONSE: The rule does not preclude local ordinances from providing exemptions determined at the local level provided all exemptions are applied uniformly and are clearly set forth in the ordinance. The Council believes that the potential applicablitiy of such an exemption is dependent upon the extent to which other affordable housing delivery mechanisms have been utilized within a municipal plan and that decisions to provide exemptions are therefore more properly made at the local level.

COMMENT: COAH must quantify the number of affordable units that will be created as a result of pass-through ordinances. COAH must determine the number of housing units that are permitted on each site within an inclusionary zoning district as a matter or right. In making this determination, COAH must consider the environmental constraints of the site and the bulk standards associated with each site or zoning district. COAH must then direct the municipality to rezone the property to ensure that the maximum number of market units and affordable units can be constructed.

RESPONSE: The Council believes that the rule so states but will amend its rule in the near future to provide greater clarity.

COMMENT: The Court upheld in its Third Round opinion the concept of payments in lieu of construction of affordable units from developers and this provision is included in many of the growth share ordinances currently in effect. The Court did rule that COAH must provide regulatory standards to guide the formulation of municipal ordinances require such payments, particularly to the dollar amount "charged" by a municipality to a developer for each affordable unit. COAH had proposed a rule change in December 2006 standardizing such payments. This rule change has been incorporated into the new rules and the municipalities will have to return all or most of the payments in lieu that have been collected as the growth share ordinances did not provide a compensatory benefit.

RESPONSE: The Council is unaware of any requirements for municipalities to return previously collected

affordable housing funds predicated on payments in lieu of constructing affordable housing that have been collected under growth share ordinances that did not provide a compensatory benefit.

COMMENT: On April 2, 2007, the stay request was granted by the Appellate Court and it entered an Order that stated: "A stay is granted as to any municipal ordinance in effect at the time of the issuance of the opinion. The validity of any ordinance should be tested on a case-by-case basis after COAH promulgates new rules in accordance with this court's opinion." The net effect of this stay is that all of the approvals issued by all of the municipalities to all of the developers that are subject to a municipal growth share ordinance will all be "tested on a case-by-case basis after COAH promulgates new rules in accordance with this court's opinion." This simply means that somehow the municipalities and developers and perhaps COAH and ultimately the Courts will have to review the hundreds, or perhaps even thousands, of approvals that have been granted over the past several years that are subject to the growth share ordinances. Then it will have to determine whether the developers will be required to provide any affordable housing pursuant to those ordinances and in what form and what amount that will be and what will be an appropriate "compensating benefit" that will be provided to the developers in exchange for providing such affordable housing. This of course will not be known until COAH's new rules become effective and /or the stay is lifted and then the matter is resolved by the courts and as such, the complete impact as to municipalities is not presently quantifiable. COAH should revise its rules to acknowledge this problem and create rules that will provide a frame work for its resolution, and at least, do not require that a municipality's growth share obligation count any of the Cos generated pursuant to the growth share ordinance problem and to assist the Township and the developers in this process.

RESPONSE: In a future rule amendment, the Council will address the issue by allowing affordable units that result from redevelopment agreements or subdivision and site plan approvals granted between December 20, 2004 and June 2, 2008 to receive a two for one bonus credit. The bonus will be limited to units in municipalities that were under the Council's jurisdiction during the third round.

COMMENT: To the extent that COAH requires that all inclusionary sites be suitable, COAH should scrutinize the sites. Sites in PA 1, with public transportation, near commercial shopping and employment opportunities, without environmental constraints, and consistent with smart growth should be explicitly preferred in towns where such sites exist, despite other municipal preferences. If the goal is to establish realistic sites, COAH's review must consider whether a municipality's choice of a site is illusory, as compared to other sites, especially those proposed by developers. COAH's experience and the efforts of recalcitrant communities demonstrate that COAH should place great emphasis on the willingness of a developer to develop a site. This criterion, explicitly set forth in N.J.S.A. 52:27D-310(f) (in formulating a housing element and fair share plan, towns should give consideration to sites of those who have expressed an interest and willingness) should be given great weight to assure realistic site and implementation.

RESPONSE: The Council looks very carefully at all sites proposed for inclusionary development to ensure that they are not realistic. Sites in PA 1, PA 2, Centers and sewer service areas with public transportation, near commercial shopping and employment opportunities are the preferred location for inclusionary zoning. Environmental constraints are part of site suitability review. While every effort is made to work with municipalities to ensure consistency with smart growth initiatives, the Council also respects municipal preferences so long as they present a realistic opportunity for the production of affordable housing. Developers who are eager to provide affordable housing on appropriate sites are encouraged to work with municipal planning boards during the formulation of the housing element and fair share plan.

COMMENT: More realistic calculations for "payment in lieu" fees are positive steps.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: You need eight, you need 12, you need 15 units per acre to make this thing happen. Under those scenarios, you can then build houses for $ 160,000 and we have some density. But you can't do it with 13 houses on four-acre lots. Build an affordable house on a four-acre lot? Who buys that affordable house? Who can maintain it and

cut the lawn and pay the lawn fees? It's impossible. So there's got to be some consideration to look on how this will work out. There's got to be someone who takes a good look at the zoning and makes changes to the zoning if the town doesn't do it to get the density you need to create the climate for decent housing.

RESPONSE: N.J.A.C. 5:97-6.4(b)8 clearly indicates that inclusionary zoning ordinances must contain a development size threshold below which affordable units may not be required. The rule also specifies that this threshold must be based on whether or not the density and set-aside required by the zoning ordinance could result in the provision of at least one affordable unit on-site, e.g. the individual parcel would accommodate less than five dwelling units where the zoning requires a 20 percent set-aside. At N.J.A.C. 5:97-6.4(c), the rule also allows the municipal ordinance to provide developers with the option of providing the units elsewhere in the municipality or making a payment in lieu of providing the whole or fractional affordable units required by the zoning. Finally, it is incumbent upon municipalities to ensure that bulk standards are revised to make increased densities viable. The rule will be strengthened in a future amendment to require municipalities that adopt inclusionary zoning ordinances to allow attached housing as necessary to make the affordable housing realistically possible. The design of multi-unit structures to have an appearance that fits almost un-noticeably into singe-family detached neighborhoods has been used successfully in several New Jersey municipalities as well as nationwide.

COMMENT: Various municipalities are developing transfer of development rights programs. The Pinelands Commission has developed such a program and the Highlands Council is required by law to develop a transfer of development rights program. Such programs typically require developers in receiving districts to purchase development rights from land owners in sending districts. In amending municipal master plans, the Pinelands Commission has started to require developers in receiving zones to use Pineland Development Credits (or PDCs) for each market unit permitted as a matter of right by the municipal zoning ordinance. This program adds approximately $ 8,000 to the cost of providing each market unit even before COAH adds the additional burden of subsidizing affordable housing without the benefit of any additional market housing. The costs associated with purchasing development rights and the uncompensated costs associated with requiring the construction of affordable housing without any additional market units, will have a chilling effect on the production of market housing and affordable housing. COAH should clearly exempt any site zoned for low and moderate income housing from any requirement to purchase development rights pursuant to any municipal or State transfer of development rights program.

RESPONSE: The ability to exempt sites zoned for low- and moderate-income housing from requirement to purchase development rights is outside the scope of the Council's jurisdiction. The requirements are imposed by other agencies. The Pinelands Commission has already taken preliminary steps towards supporting affordable housing by exempting affordable units from PDC requirements in several cases. Municipalities may supplement this effort through the use of development fees to assist the developers of affordable housing with acquiring PDCs. The Council will direct its staff to discuss the issues further with Pinelands staff to work on mutually acceptable guidance that can be provided to municipalities to ensure that inclusionary zoning ordinances in the Pinelands Growth Areas will be carefully designed to provide for both PDC obligations and affordable housing obligations. Other TDR programs are either only in a pilot stage or have yet to be fully established. The Council will work with the State Planning Commission and the Highlands Council to ensure that mutual goals can be incorporated into both TDR and affordable housing programs. This may be the subject of a future rule amendment.

COMMENT: N.J.A.C. 5:97-6.4 establishes no standards to govern the amount of any fee assessed in lieu of construction of the required affordable unit, a practice that the Supreme Court and this court has criticized and condemned.

RESPONSE: N.J.A.C. 5:97-6.4(c)5 clearly sets a standard for payments in lieu of constructing affordable housing including a chart showing specific amount detailed by region.

COMMENT: Non-residential growth share does not appear to carry any compensatory benefit either. It is simply a requirement to either provide the affordable housing at the anticipated job production rate or to make a payment in lieu

of providing the affordable housing.

RESPONSE: The rule specifically requires at N.J.A.C. 5:97-6.4(b)9 that zoning in non-residential districts shall provide an increase in permitted floor area with proportional increases in allowable height and/or impervious coverage to offset the cost of any affordable housing requirements. The rule will be amended in the near future to specify that the zoning ordinance shall clearly set forth the increases permitted and shall require, through an amendment to the municipal application checklist that the application for development include a description of what increases are sought along with what level of affordable housing will be provided prior to being deemed complete pursuant to N.J.S.A. 40:55D-10.3.

N.J.A.C. 5:97-6.4(a)

COMMENT: Pinelands municipalities and municipalities under the jurisdiction of other regional planning agencies may not be permitted to increase densities under the regulations of the regional planning agencies. Pinelands municipalities that have no Regional Growth Areas are not permitted to offer additional density to compensate a developer for affordable housing because of the requirements in the Comprehensive Management Plans. Moreover, rural communities with no sewer or water utilities may not be allowed to increase densities or provide additional compensatory lots based upon DEP's interpretation and application of N.J.S.A. 58:11-25.1 which limits the number of lots to 49.

RESPONSE: Pinelands municipalities and municipalities under the jurisdiction of other regional planning agencies typically have both growth and preservation areas. The densities permitted in these growth areas is generally flexible enough to accommodate some level of density increases that may be necessary to provide sufficient incentives for the production of affordable housing. Additionally, innovative approaches using Pinelands Development Credits (PDC) or other Transfer of Development Rights programs may provide additional opportunities to be considered. The Pinelands Commission has already provided several PDC exemptions in support of affordable housing initiatives. Pinelands communities with no growth areas are not likely to grow and would therefore have a limited affordable housing obligation. Some municipalities have considered the use of affordable housing trust funds to assist in the acquisition of TDR credits needed to increase densities. Finally, municipal planning officials should be aware of areas where DEP regulations would preclude density increases for the creation of additional lots and consequently not apply zoning standards that can not be implemented. In such cases, additional affordable housing opportunities could be sought in other zones or through other programs described in N.J.A.C. 5:95-6.6 through 6.15.

COMMENT: Add at the end of this paragraph: "Manufactured housing land leased communities may be included."

RESPONSE: The Council appreciates the commenter's suggestion. The rule does not preclude manufactured housing or other types of land leased communities. While additional clarification may be considered as part of future rule amendments, it may not be practical to begin listing each and every type of community that may be included in plans.

N.J.A.C. 5:97-6.4(a)2ii

COMMENT: The town should not be permitted to negotiate with the developer an agreement as to the production of affordable housing for a project. As with payment-in-lieu contributions under the original Third Round rules, it does not provide adequate notice to a developer of what exactly is required of them. Towns have all the leverage in negotiating as the developer needs the approval. Towns could use this as a mechanism to deny projects or get windfalls by requesting a large amount of affordable housing when nothing else requires it.

RESPONSE: The purpose of adopting zoning of any kind is to clearly set forth what is required of a developer as a prerequisite for gaining development approvals. The rule sets forth minimum standards to be applied including set regional figures related to payments in lieu of constructing affordable housing. However, some issues can not be

accommodated through zoning. For example, property use as a rental unit can not be dictated via zoning. Therefore, if a municipality is relying on a particular development to produce affordable rental units, the Council will accept a developer's agreement committing to the production of affordable rentals in support of the municipality's plan to address a rental requirement.

N.J.A.C. 5:97-6.4(b)

COMMENT: The rules present a presumptive density of 10 units per acre regardless of whether this is appropriate to the surrounding development pattern of a site, or exists elsewhere in the community. Zoning and land use development for affordable housing purposes should be compatible with the existing neighborhood. This issue of neighborhood compatibility is one of the requirements imposed upon zoning ordinances by the MLUL. This also treats affordable housing development differently from other developments and overrides municipal zoning authority by providing developer discretion. There should be language in the regulations that stipulate that any relaxation of zoning must be complementary to the area's established development pattern. The regulations should be amended to provide specific criteria to assess issues of compatibility.

RESPONSE: The rule clearly indicates that the presumptive minimum density referenced in N.J.A.C. 5:97-6.4(b) is specific to sites or districts that were zoned as part of a prior round plan (that is, before December 20, 2004) and that on those sites, the set-aside of 15 percent and density of 10 units per acre are indicators of zoning regulations that the Council has long relied upon as generating a realistic opportunity for the production of affordable rental housing. With regard to this prior round standard, the standard was relied upon only as a means to demonstrate that the proposed zoning was sufficient to address the rental obligation. The Council has full faith and confidence that local planning boards have the expertise necessary to assess issues of neighborhood compatibility when crafting zoning regulations. Additionally, the Council accepts firm commitments from the developers of sites being approved for development as an alternative to demonstrate that rental housing will indeed be produced. The Council accepts such developer agreements as sufficient demonstration that rental units will be produced regardless of density issues.

COMMENT: In a municipality not containing "smart growth" areas (entirely within and Agricultural Development Area and within Planning Areas 4, 4B and 5) has been working on a new Master Plan that will recommend ordinances to reduce the ultimate build out potential of the municipality, that municipality should not be assumed to be altering residential densities in order to be exclusionary. That would be an inaccurate and unfair assumption of causality. There are many legitimate purposes for which a municipality engages in a comprehensive planning process and that should not be usurped by the COAH regulations.

RESPONSE: Master Plan revisions that recommend the use of zoning ordinances as a tool to reduce the ultimate build out potential of the municipality should simultaneously identify portions of the municipality that might be best suited for inclusionary zones that take advantage of clustering, lot averaging and alternative wastewater management mechanisms.

COMMENT: Even if sufficient to compensate developers for providing affordable housing, COAH has not employed a density bonus or presumptive density scheme that would require municipalities to provide a deeper affordability standards and has not required municipalities or developers to apply for subsidies that permit them to go deeper in affordability. Although public subsidies, such as Balanced Housing and Low Income Housing Tax Credits, are available to assist with inclusionary developments, COAH has not required their use. COAH's failure to link increased density bonuses with deeper affordability standards and to require the use of public subsidies appears to be a rejection of the Brunick/Applegate and Thorn-Thomsen Report. That report recommended at page 71 that "DCA . . .allow state and federal financing sources to be used in inclusionary developments that contain units to be counted towards a municipality's affordable housing obligation, BUT ONLY if the state and federal financing is used to produce affordable housing units above the baseline requirements for affordable housing (% of affordable housing required and level of affordability)." That recommendation has not been implemented, and the commenter requests COAH to state why that is. The statement "Incentives to subsidize the creation of affordable housing available to very-low-income

households may be included in a developers or redevelopers agreement" is practically meaningless and unlikely to lead to any very-low-income housing. Instead, COAH should offer mandatory increases in density to developers providing additional very-low-income units in line with the recommendations of the report by its consultant Nicholas Brunick.

RESPONSE: The Council cannot direct municipalities to seek specific funding sources for affordable housing developments. In recognition that deeper affordability standards are a desired outcome of the Council's process, portions of development fees collected have been mandated for this purpose. The Council also agrees that public subsidies should be permitted to be used to make affordable units in inclusionary zoning developments more affordable. However, the regulations governing the use of these funds are outside the scope of the Council's authority. The proposed rule included provisions for reaching very-low-income target populations through the use of bonus incentives and future rule amendments will contemplate additional incentives, including additional increases in density to developers to facilitate the provision of additional very-low-income units.

COMMENT: The commenter objects to this provision of the regulations because it unnecessarily reduces the ability of developers to provide affordable housing and fails to account for the positive experience under the First and Second Rounds of using presumptive densities. The commenter requests COAH to address why it decided not to require presumptive densities when presumptive densities have been acknowledged as one of principal reasons why New Jersey has successfully provided affordable housing. In the Brunick/Applegate and Thorn-Thomsen Report at pages 35-36, the issue of presumptive densities was addressed by COAH's retained expert on compensatory benefits. This is as close as a retained expert could come to declaring that COAH would be unreasonable if it did not employ presumptive densities. Please state why COAH decided not to use presumptive densities when they have been proven to work. Why did COAH reject "two decades worth of experience at providing cost offsets and incentives to developers through presumptive densities"?

RESPONSE: The Council will propose an amendment in the near future to establish minimum presumptive densities within inclusionary zones to be determined based on SDRP Planning Areas.

COMMENT: Should the reference therein be to N.J.A.C. 5:97-6.4(c) instead of N.J.A.C. 5:97-6.4(g)?"

RESPONSE: There is no reference to N.J.A.C. 5:97-6.4(g) in N.J.A.C. 5:97-6.4.

COMMENT: Inclusionary zoning should not be applied to all zones like many towns did with growth share ordinances; developers should be allowed to elect to use a provision requiring affordable housing to capture incentives. There should be specific zones identified where a certain density is permitted; however, if the developer sets aside a certain percentage for affordable housing, he gets the incentives and benefits discussed in the regulation, like a density bonus and relaxed standards or fees. It is clear that the prior "growth share ordinances" were used by towns to frustrate development. If the incentives discussed in the regulation and contained in the ordinance are truly enough, some developers would elect to set aside units for affordable housing to capture those incentives. Otherwise, towns could use these inclusionary zoning ordinances to frustrate development like they did in the past.

RESPONSE: The application of inclusionary zoning is a local decision. The rule clearly indicates that inclusionary zoning may apply to all or some zones. Some zones could have higher set-aside requirements based on a higher provision of offsetting incentives while other zones might have lower or no set-aside requirements and offsetting incentives. The Council believes that local planning boards will utilize the flexibility of this planning tool when deciding to use inclusionary zoning to address affordable housing needs and that inclusionary zoning will not be adopted in areas of a municipality where the provisions of the ordinance become unworkable. The commenter should note that the rule will be amended in the near future to provide presumptive minimum densities and presumptive maximum set-asides by SDRP planning area.

COMMENT: The proposed incentives should be revised to ensure that there are meaningful incentives for developers to provide affordable housing units. The Appellate Division, in *In re Adoption of N.J.A.C. 5:94,* 390 *N.J.*

Super. 1 (App. Div. 2007), required that there must be meaningful incentives for developers to provide affordable housing in order to ensure that there is a "realistic opportunity" for the production of affordable housing. This requirement is acknowledged by COAH's consultants in Appendix F, Task 3 - Compensatory Benefits to Developers for the Provision of Affordable Housing ("Report"), at 1-2, but ultimately ignored by COAH in the proposed regulations. For instance, the regulations fail to answer the fundamental question for compensatory benefits, the value of the benefit to be received by the developer. Must a municipality provide a compensatory benefit (1) which is sufficient to make the project as a whole financially viable with a reasonable profit, (2) which provides a value to the developer at least as much as the cost of making the affordable housing contribution, or (3) which provides some lesser and undefined value to a developer? If the first option is chosen, what does COAH believe a reasonable profit is? The regulation should be revised to require a municipality to provide a value to the developer at least as much as the hard and soft costs for the developer to make the required affordable housing contribution. If the municipality and the developer are unable to construct such an incentive package for some reason, such as site constraints, the affordable housing contribution shall be reduced until there can be a financial incentive, which will provide value to the developer of an amount at least equal to the hard and soft costs of providing the affordable housing contribution.

RESPONSE: The rule will be the subject of a future amendment wherein the Council will consider minimum presumptive densities for inclusionary zones based on SDRP Planning Areas.

N.J.A.C. 5:97-6.4(b)1

COMMENT: The section requires all sites for inclusionary zoning to meet the site suitability criteria set forth in N.J.A.C. 5:97-3.13. However, N.J.A.C. 5:97-3.13(b) requires inclusionary developments to be located in Planning Areas 1 and 2. For Planning Areas 3, 4, 4B and 5, inclusionary developments are to be located in centers. The proposed rules should clearly state that municipalities located entirely in Planning Areas 4B and 5 that also rely on individual wells and septic systems should be allowed to use the growth rate methodology of one affordable unit per five housing units and every 16 jobs created based on the 2003 zoning densities in place as long as a bonus unit is provided for every affordable unit created and one additional incentive required by N.J.A.C. 5:97-6.4(b)4 is provided. This will allow municipalities in Planning Areas 4B and 5 to provide their fair share of affordable housing while maintaining development densities that are consistent with State Development and Redevelopment Plan. By maintaining the 2003 base zoning density, this will also prevent towns from adopting large lot zoning just to preclude an affordable housing obligation.

RESPONSE: The rule does not require inclusionary developments in Planning Areas 3, 4, 4B and 5 to be in centers. While centers are the preferred location for inclusionary development, the rule requires municipalities or developers proposing sites located in Planning Areas 3, 4, 4B, 5 or 5B that are not within a designated center or an existing sewer service to demonstrate that the site is consistent with sound planning principles and the goals, policies and objectives of the State Development and Redevelopment Plan. The rule does not provide for any growth share ratio other than one affordable unit among five total housing units and one affordable unit for every 16 jobs created through new or expanded construction. The Council believes that the proposed rule is clear that these ratios apply regardless of Planning Area.

COMMENT: The developer's right to appeal the economic feasibility of zoning should be deleted. COAH has gone too far in response to the Appellate Division compensatory benefits ruling in *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing*, 390 *N.J. Super.* at 388-393. As with N.J.A.C. 5:94-6.4(b)4, a provision such as this is an invitation to litigation and will mire municipalities, as well as developers, endlessly in issues of economic feasibility that no court can really resolve. This provision is not required *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing*, 390 *N.J. Super.* 1.

RESPONSE: The provision of the rule will be deleted in a future rule amendment.

COMMENT: COAH should clarify that a town may adopt and implement a growth share ordinance that provides

sufficient incentives on sites that are developed on septic and individual wells, specifically not needing public sewer and water services. By requiring that all sites that may be impacted by a growth share ordinance meet COAH's site suitability criteria at N.J.A.C. 5:97-3.13, it appears that COAH's rules may be requiring public sewer and water services. This makes no sense and should be clarified to permit growth share ordinances on sites without public sewer and water services.

RESPONSE: The Council's site suitability criteria at N.J.A.C. 5:97-3.13 require consistency with the applicable area wide water quality management plan (including the wastewater management plan). The availability of existing or proposed public sewer and water services must be taken into consideration by municipalities when inclusionary zoning is used as a mechanism for delivering affordable housing. Growth share ordinances may be applicable in zones or sites without public sewer and water services when it can be demonstrated that alternate provisions are adequate. For example, clustering and/or lot size averaging practices may provide a partial solution as may the exploration of wastewater alternatives. While the Council recognizes that an extension to a sewer service area is not possible for some locations of the State, septic systems may be possible in accordance with DEP's regulations. DEP has granted more than 100 permits for small and innovative technology wastewater treatment plants and is actively working with the Pinelands Commission to test the use of individual innovative septic treatment units on one-acre residential parcels. Municipalities may work with DEP to safely apply such technology to provide affordable housing in other parts of the State. Towards this end, it is incumbent upon municipalities to work closely with counties as wastewater management plans are updated to ensure compatibility between proposed inclusionary zoning ordinances and water quality management planning. The rule will also be clarified in a future rule proposal to provide a better definition of sewer and water services necessary to demonstrate site suitability.

N.J.A.C. 5:97-6.4(b)2

COMMENT: N.J.A.C. 5:97-6.4(b)2iv Insert the following: "The site or district zoned on or before (effective date of this chapter) with a increase density to produce affordable housing at a minimum gross density of 15 to 20 units per acre with a 15% set aside, a gross density of 10 to 15 units per acre with a 13.5% set-aside, a gross density of 6 to 10 units per acre with a 10% set aside for multifamily (including town homes) attached units, with rental projects providing not more then a 10% percent set aside. All of the above projects would need to be within 2 miles of some form of mass transportation stations which include light rail, bus, train, or ferry stops or be in a state designated smart growth area."

RESPONSE: The Council appreciates the commenter's recommendations. The rule will be the subject of a future amendment wherein the Council will consider minimum presumptive densities for inclusionary zones based on SDRP Planning Areas. Additional criteria for presumptive minimum densities and lower affordable housing requirements based on qualifying Census tracts will also be considered.

COMMENT: "The zoning provides one additional market rate for every affordable unit required on-site." Cf. N.J.A.C. 5:97-6.4(c)2, "The affordable housing requirement shall not be rounded." What about the market rate unit? If the requirement is for 2.4 affordable units, and the builder builds three, clearly he gets three market-rate units, but if he pays in lieu for the 0.4 unit, what happens to the 0.2 market rate unit he earns?

RESPONSE: The issue of rounding will be clarified in a future rule amendment. As a result of the Appellate Division in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007), rounding will be addressed to reflect compensatory benefits more accurately.

COMMENT: The example given seems to assume that a 50-acre tract with one-half acre minimum lot sizes will yield 50 dwelling units, although this is not clearly stated in the example. Twenty percent of 50 units will yield 10 affordable units, for a total of 60 dwelling units provided. Zoning standards for this pocket of 10 units of low and moderate income housing will have to be established, since they likely will not be the same type of housing provided on the half-acre lots. The same scenario could occur with one-, two-, three-acre or larger lots, with a pocket of low and

moderate income dwellings provided on the same tract with a presumably higher net density.

RESPONSE: The rule requires municipalities to evaluate the zoning to determine whether reduced setbacks, height and/or stories requirements, lot widths and/or lot sizes are necessary to accommodate the additional number of units. The rule also requires inclusionary zoning ordinances, to the extent feasible, to require that developers fully integrate the low- and moderate-income units with the market units. The example used in the rule contained mathmatical errors which have been corrected.

COMMENT: In the example given under N.J.A.C. 5:95-6.4(b)2i, there is a 20 percent set-aside for half-acre, detached single family lots, implying that a 20 percent set-aside would be acceptable. In subparagraph (b)2iii, there appears to be a standard set of a four units per acre (quarter acre lots) with only a 15 percent set-aside. The set-aside permitted for all units, irrespective of the underlying density, should be a minimum 20 percent set-aside based upon the growth share ratio established by COAH. Moreover, it has to be clearly established in the regulations that municipalities have the right to require a greater than 20 percent set-aside without having to overcome any presumption that COAH may establish. In fact, COAH should encourage higher set-asides to be utilized by municipalities to ensure that the entire obligation, inclusive of the first and second rounds are accommodated. A municipality that has not been directly involved in the COAH program for the first and/or second rounds will never be able to realistically satisfy its obligations for the first and second round merely through even a 20 percent set-aside prospectively. It is simply not going to happen. Municipalities should at least be given the opportunity and ability to increase that ratio without having to fight COAH for it.

RESPONSE: This rule will be amended in the near future to provide minimum presumptive densities and maximum presumptive set-asides for inclusionary zones based on SDRP Planning Areas.

COMMENT: In residential zones, this requirement supersedes density allowed by the zone by 20 percent. The power for a municipality to zone is vested in N.J.S.A. 40:55D-62. The Municipal Land Use Law (MLUL) states that the zoning ordinance shall be drawn with reasonable consideration to the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate use of land. The regulations in the zoning ordinance shall be uniform throughout each district for each class or kind of buildings or other structure or uses of land. A zoning ordinance may perform the following functions (per N.J.S.A. 40:55D-65): a) Limit and restrict buildings and structures to specified districts an regulate buildings and structures according to their type and the nature and extent of their use, and regulate the nature and extent of their use, and regulate the nature and extent of the use of land for trade, industry, residence, open space or other purposes; and b) Regulate the bulk, height, number of stories, orientation, and size of buildings and the other structures; the percentage of lot or development area that mat be occupied by structures; lot sizes and dimensions; and for these purposes may specify floor area ratios and the provision of adequate light and air, including, but not limited to, the potential for utilization of renewable energy sources. The Council is proposing to override a municipality's power to zone and the increase in density may be in conflict with the MLUL, as the Council mandated increase in density may not be reasonable in consideration to the character of the zone district and its peculiar suitability for particular uses and may not be the most appropriate use of land. The increase in density may also conflict with the above stated functions of zoning.

RESPONSE: The proposed rule does not seek to override the municipal zoning powers authorized by the Municipal Land Use Law. Rather, the rule provides minimally acceptable criteria to be used by the Council in determining the financial feasibility of zoning that municipalities deem appropriate for inclusion in a plan to address regional affordable housing needs. Municipalities may chose to use zoning to accomplish their affordable housing goals and in so choosing, a wide range of flexibility has been provided so that consideration may be given to the character of each zoning district and its peculiar suitability for particular uses to encourage the most appropriate use of land. When inclusionary zoning is used, the affordable housing obligation may be fulfilled with a higher set-aside and density on some sites or in some zones and a lower or no required set-aside and density on other sites or zones. Additionally, zoning is not the only mechanism municipalities may use to address affordable housing obligations. Additional options that do not rely on new inclusionary development include the market to affordable program which allows a buying down of existing

market-rate units, reconstruction of existing units, municipally sponsored rental programs and accessory apartment programs. Other programs available to municipalities are detailed in N.J.A.C. 5:97-6.

COMMENT: Requiring that additional market rate units be permitted as a compensatory benefit conflicts with the environmental, health and safety reasons for the permitted density in many rural townships. The maximum densities in many communities are based on the minimum required to protect the environmental sensitivity of the land and its ability to support septic systems. The additional market rate units amount to increased density which will contribute more toward the degradation of the environmental sensitive lands and may endanger the health and safety of a community by requiring a septic density which exceeds the carrying capacity of the land. Furthermore, this situation is exacerbated by N.J.A.C. 5:97-6.4(b)3, which limits the municipality's ability to revise its zoning so as to ensure that the carrying capacity will not be exceeded.

RESPONSE: The Council recognizes that there may be specific instances where density increases will not be possible due to environmental concerns. There are also areas of the State zoned for large lots where soil conditions are less restrictive and where clustering provisions could be coupled with modest density increases to accommodate affordable housing. However, most notably, the Council encourages municipalities to target existing and proposed sewer service areas as the preferred location for inclusionary development. In municipalities where this is not an option, alternative wastewater treatment mechanisms may be explored. Finally, it should be noted that municipalities have a myriad of options available for meeting their affordable housing obligations, of which inclusionary development is only one option. Additional options that do not rely on new inclusionary development include the market to affordable program which allows a buying down of existing market-rate units, reconstruction of existing units, municipally sponsored rental programs and accessory apartment programs. Programs available to municipalities are detailed in N.J.A.C. 5:97-6.

COMMENT: The rules state that inclusionary zones may apply to all or some zones within the municipality. If they do not apply to all zones, then any development that does not include affordable housing or a payment in lieu of affordable housing will add to the municipality's need for affordable housing to be provided at another location. If they apply to all zones and development, then it turns the purposes of planning as identified in N.J.S.A. 40:55D-2 on its head. Particularly, subsections e and g, which promote the establishment of appropriate population densities and concentrations and to provide sufficient space in appropriate locations for a variety of land uses, are subverted. The density or intensity of development is uncertain, and the mix of single-family, multi-family, mixed residential and non-residential uses, is blurred across zone lines. All zoning in a municipality becomes driven by the provision of affordable housing and that housing could be located anywhere. This is the antithesis of planning. It is spot zoning mandated by COAH regulations.

RESPONSE: Municipalities have a great deal of flexibility in crafting zoning and, when inclusionary zoning is used, affordable housing requirements may be fulfilled with a higher set-aside and density on some sites or zones and a lower density and lower set-aside or no set-aside on other sites or zones as is appropriate for the land use goals recognized in the municipal master plan. This practice reflects proper planning by recognizing the differences in development capacity between various zones within a municipality.

COMMENT: COAH should recognize and state explicitly and simply that it is proposing a 16.7 percent set-aside in inclusionary zoning regardless of density. That stark statement would recognize the success of the First Round and Second Round inclusionary zoning standards that provided stability, predictability and simplicity, with the presumptive minimum densities and maximum set-asides of six units/acre with a 20 percent set-aside in the First Round and then a more nuanced, calibrated approach in the Second Round, at N.J.A.C. 5:93-5.6(b). That approach worked very well in producing affordable housing, as COAH's own consultant Nicholas Brunick, Esq. recognized (see Appendix F, Task 3 report, 40 N.J.R. 420). The rule should be revised to comply with the spirit of Brunick's recommendation to "Establish a predictable affordable housing requirement coupled with a required density bonus or a required presumptive density level." 40 N.J.R. 420. Specifically, the rule should be amended to provide realistic presumptive minimum densities and maximum set-asides as mandated in the First and Second Round Rules. The density increase offered of one additional

market-rate unit for each required affordable unit in the current proposal is unlikely to be effective, compared with the past exemplary perspective, from a national perspective, of the realistic presumptive minimum densities and maximum set-asides required in the First and Second Round.

RESPONSE: The rule will be the subject of a future amendment wherein the Council will consider minimum presumptive densities and maximum presumptive set-asides for inclusionary zones based on SDRP Planning Areas.

N.J.A.C. 5:97-6.4(b)2i

COMMENT: The example of how to calculate the yield of inclusionary zoning and the "bonus" is incorrect. If the current zoning provides for half-acre zoning on a 50-acre tract, that is, two units/acre, then a 50-acre tract would yield 100 units, not 50 as indicated in the COAH example. Consequently, a 20 percent set-aside would yield 20 affordable units. If 20 additional market-rate units are added to the base density, the total yield of the 50-acre tract would be 120 units, or 20.4 units/acre with a 16.6 percent set-aside. This is far, far below the presumptive minimum densities and maximum set-asides that COAH found to be realistic and indeed worked well in the First and Second Rounds.

RESPONSE: The example contained a mathmatical error that has been corrected.

COMMENT: COAH is permitting municipalities to impose a 20 percent set-aside without requiring any additional market units. COAH must determine a probable development (absorption) rate of lands that are so zoned in order to determine the realistic opportunity created by such zoning. COAH must evaluate the rate of development during its plan evaluation and require changes to the density when the zoning scheme fails to yield the anticipated rate of affordable housing.

RESPONSE: The rule will be amended in the near future to provide minimum presumptive densities and maximum presumptive set-asides based on SDRP planning areas.

COMMENT: By requiring an additional market rate unit for every affordable unit provided, municipalities that are "behind" in their affordable housing production are not able to address the shortfall through inclusionary zoning, which is essentially the only compliance mechanism that does not require the direct outlay of money by a municipality. There should be more flexibility with respect to the percentage of market-rate units to affordable units based on local conditions and land values and the benefits to developers of changes in zoning to either permit higher residential densities or a change from commercial to residential zoning.

RESPONSE: The rule will be amended in the near future to provide minimum presumptive densities and maximum presumptive set-asides based on SDRP planning areas.

COMMENT: Let us assume that a 10-acre site is zoned at two units per acre for single family homes. However, based on the bulk standards and the environmental constraints, the site can only yield 13 housing units. COAH must ensure that the site is rezoned to permit 20 market housing units plus the affordable housing units. Let us assume a 20-acre site that is partially constrained by wetlands. The site is zoned to permit townhouse units and apartments at eight units per acre. The developer must be entitled to 160 market units plus 32 affordable housing units and the site must be rezoned to permit both.

RESPONSE: The rule currently requires that bulk standards be reviewed to determine what changes would be necessary to accommodate density increases necessary to create a realistic opportunity for affordable housing. A future amendment to the rule will strengthen this requirement to make it clear that bulk standards must be revised to accommodate density increases without the need for variances. Sites that are constrained environmentally are limited in growth potential to that which is permitted after the application of applicable environmental regulations and the Council will not require further density increases to accommodate inappropriate development patterns. The density increases and set-asides prescribed by the Council's rules are bases on total gross density. Therefore, a 20-acre site zoned at eight units per acre with a 20 percent set-aside would result in 160 total units consisting of 32 affordable units and 128 market-rate

units.

COMMENT: The modifier "or" should be added to the end of this provision. Otherwise, this provision could be misread to imply that N.J.A.C. 5:97-6.4(b)2i is to be applied retro-actively to inclusionary developments that have already received municipal development approval and potentially under construction or even built. Surely, COAH does intend to apply this provision to inclusionary developments that have already received municipal development approval (and thus satisfying N.J.A.C. 5:97-6.4(b)2ii.).

RESPONSE: The rule has been clarified to state that the Council shall generally accept such zoning as providing a realistic opportunity for the creation of affordable housing when at least one of the conditions are met.

N.J.A.C. 5:97-6.4(b)2ii

COMMENT: This regulation becomes the de facto requirement and encourages "contract zoning" which is contrary to well-established law. A developer should not have to approach a community to negotiate a developer's agreement setting forth affordable housing production responsibilities before making a decision to acquire and develop property or submitting a development application. To the contrary, a municipality is obligated to prepare a Master Plan and adopt zoning ordinances that are easy to understand and spell out the developer's affordable housing responsibilities and the compensatory benefits that are being provided. Commercial and residential developers alike need to understand precisely what is required of them before they make a business judgment to spend substantial sums to purchase and develop property. If this clarity is not provided, developers will look elsewhere for development opportunities which will have a devastating impact on New Jersey's economy and result in lost housing and employment opportunities.

RESPONSE: It should be noted that the reliance on a developers agreement is an alternative to meeting the zoning criteria set forth in the rule. The rule has been clarified to indicate that at least one of the listed criteria must be met.

COMMENT: COAH should reword paragraph (b)2 so that the submission of an agreement or approval resolution would be a means of providing a realistic opportunity for the creation of affordable housing. It appears that this rule requires an executed developer's agreement with a municipality and an adopted board development approval to be deemed to provide a realistic opportunity. By rewording the subsection, this would be similar to the wording of an agreement or approval resolution as noted for inclusionary rental zoning at paragraph (b)7 of this subsection.

RESPONSE: The rule will be amended in the near future to address the commenter's concern.

N.J.A.C. 5:97-6.4(b)2iii

COMMENT: The commenter has concerns about minimum gross densities that assume sewer and water supply to development sites and that do not accommodate growth at densities appropriate for rural areas or even suburban areas with significant environmental constraints.

RESPONSE: The rule clearly specifies that inclusionary sites must meet the site suitability criteria set forth in N.J.A.C. 5:97-3.13 which includes access to water and sewer infrastructure with sufficient capacity and consistency with the applicable area wide water quality management plan (including the wastewater management plan) or an amendment to the area wide water quality management plan submitted to and under review by DEP. Further, the rule will be amended in the near future to provide definitions for water capacity and sewer capacity. The use of inclusionary zoning is a municipal option. Sites that can not meet site suitability criteria should not be zoned for inclusionary development. While the Council recognizes that an extension to a sewer service area is not possible for some locations of the State, septic systems may be possible in accordance with DEP's regulations. DEP has granted more than 100 permits for small and innovative technology wastewater treatment plants and is actively working with the Pinelands Commission to test the use of individual innovative septic treatment units on one-acre residential parcels. Municipalities may work with DEP to safely apply such technology to provide affordable housing in other parts of the State.

Moreover, the Council's rules will be amended in the near future to permit durational adjustments for inclusionary sites proposed to address the third round obligation.

N.J.A.C. 5:97-6.4(b)2 and 3

COMMENT: The language in these sections is confusing in the use of the terms "increase in density to produce affordable housing" and "additional number of units" (should it be market-rate or affordable units?). The phrase "increase in density to produce affordable housing" can and should be deleted from N.J.A.C. 5:97-6.4(b)2iii with no harm to its meaning.

RESPONSE: The language will be deleted in a future rule amendment.

N.J.A.C. 5:97-6.4(b)4

COMMENT: The requirement that an incentive in addition to one additional market unit for every affordable unit required on site be provided should be deleted. COAH is overdoing the incentive requirement by requiring municipalities to relax standards or to give monetary benefits to developers. As to the former, requiring municipalities to do so may be inconsistent with sound planning and will be an invitation to litigation by developers challenging the relaxed standards as insufficient. As to the latter, the law is clear that municipalities cannot be required to pay for affordable housing and that unfunded mandates are not permissible.

RESPONSE: In *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1, 69 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007), the New Jersey Appellate Division stated that "any rule that permits municipalities to compel on-site affordable housing or payments in lieu thereof without any compensating benefits violates the fundamental principle of the Mount Laurel doctrine that ordinances create a realistic opportunity for the construction of the region's need for affordable housing." The rule will be amended in the near future to provide presumptive minimum densities and presumptive maximum set-asides by SDRP planning area. Additional incentives, such as allowing alternate structure types (for example, duplex), revised bulk standards, relief from regulatory requirements that result in cost reductions, waived or reduced fees, tax abatements and/or direct financial aid in the form of a loan or grant to subsidize affordable housing production, are proactive steps that the Council believes municipalities must address to ensure the successful delivery of affordable housing. Providing monetary benefits to developers is an alternative that may or may not be exercised at the local level. The use of affordable housing trust funds would be permitted for this purpose thus giving municipalities the flexible option of whether and how any such monetary benefits would be provided. The Council does not require municipalities to fund affordable housing with municipal funds.

COMMENT: The focus of COAH's consultant's findings in Appendix F, Task 3, Compensatory Benefits, was on what municipalities could do to reduce the cost of constructing affordable housing. Not one recommendation was offered regarding what the governments of the State of New Jersey and counties could do to further assist in reducing the cost of affordable housing, other than formulating the rules at N.J.A.C. 5:97. There are a number of ways that the State and counties could help reduce costs, including: assisting in the on-going administration (re-lease and re-sale) and monitoring of the affordable units; reducing or eliminating NJDEP permit fees and expediting review times for projects that contain affordable housing and in fact assigning Affordable Housing Case Managers to expedite the oftentimes conflicting approval processes between Divisions of NJDEP itself as well as other State agencies and departments and counties; allow cost saving alternatives to or greater flexibility with NJDEP's stormwater and flood hazard regulations; reducing or eliminating NJDOT access permit fees, reducing the requirements for studies, and expediting review times for projects that contain affordable housing and in fact assigning affordable housing case managers to expedite the approval processes between State departments and agencies and counties; reducing or eliminating county permit or development approval fees and expediting review times for projects that contain affordable housing and in fact assigning affordable housing case managers to expedite the county review process; requiring discounted sewer and water extension and hook-up fees; providing additional tax credits or deductions to developers who provide

inclusionary housing; and providing additional State aid and school funding to municipalities that are certified by COAH or the Court, and particularly those that provide family housing. The additional incentives provided should include State- and county-level incentives as well.

RESPONSE: Although they are outside the scope of the rules, the Council appreciates the commenter's recommendations and will pass them on to the appropriate agencies. It should be noted that DEP has granted more than 100 permits for small and innovative technology wastewater treatment plants and is actively working with the Pinelands Commission to test the use of individual innovative septic treatment units on one-acre residential parcels. Municipalities may work with DEP to safely apply such technology to provide affordable housing in other parts of the state. As County Planning Boards review wastewater management plans in accordance with DEPs most recent rule adoption, counties and municipalities must work together to ensure that appropriate provisions are made to address municipal reliance, if any, on such alternatives. Further, the rule will be clarified to indicate that the Council will serve as an advocate, as appropriate, to other State agencies, such as DEP and DOT, to support the production of affordable housing.

COMMENT: There is no need for additional incentives for inclusionary housing. Developers have already been given a bonus unit, so why would the policies here ask for an additional benefit like lifting environmental regulations? The commenter strongly opposes this policy and believes this bullet should be deleted.

RESPONSE: The Council has not suggested that environmental regulations be lifted.

COMMENT: Municipalities do not have complete control with regard to granting waivers from the residential parking requirements that are part of the Residential Site Improvement Standards.

RESPONSE: The rule will be amended in the near future to delete the reference to residential parking requirements that are part of the Residential Site Improvement Standards.

COMMENT: The incentives listed in this section should have been the incentives consider in the previous section. If COAH has seen fit to increase densities for residential development on a one-to-one basis regardless of environmental constraints, infrastructure or community character, why should it also require additional incentives including housing unit types and the waivers of fees necessary for the adequate local review of development applications? This puts additional burdens on the municipality after it has already been forced to accept added density, by altering the work done to create standards necessary to achieve the types of development envisioned by the community. This is another ad hoc approach to planning that ignores smart growth principals and community vision. Not only is COAH advocating an ad hoc approach to density, but now to design. Municipalities spend countless hours and resources practicing good planning and design, creating standards that meet the character of the community and they are now being asked to abandon good planning for the sake of on-site production of affordable units.

RESPONSE: The commenter has taken the Council's rules out of context and applied them incorrectly. The applicability of density bonuses cannot be construed to be "regardless of environmental constraints, infrastructure or community character." All of these factors must be taken into consideration when determining if proposed zoning represents a realistic opportunity to produce the affordable housing envisioned by the municipal plan. Inclusionary sites, regardless of zoning, must be suitable pursuant to the Council's standards set forth in N.J.A.C. 5:97-3.13. Additionally, it is important to note that how and where inclusionary zoning is applied is a municipal decision. Municipalities must consider environmental constraints, infrastructure availability and community character, along with a multitude of other planning considerations, when making these decisions. However, the rule will be amended in the near future to provide clear standards in the form of minimum presumptive densities and maximum presumptive set-asides by SDRP planning area.

COMMENT: The regulation should be revised to provide meaningful incentives. It is unreasonable to suggest that a reduction in the parking requirements is an alternative. Sufficient parking is necessary to make development function properly. The other proposed incentives are vague and do not offer any meaningful incentive to developers. Alternate

structures (for example, duplexes, triplexes, quads, etc.) may not be an available option for communities in rural and/or environmentally constrained areas (that is, Pinelands communities) that have no centralized sewer or water utilities and must comply with stringent nitrate dilution standards for septic systems. As such, only single-family detached homes on large lots may be permitted in such communities which makes it economically infeasible to produce affordable housing. Moreover, reductions in parking standards for residential subdivisions may contravene the uniform and Statewide Residential Site Improvement Standards in N.J.A.C. 5:21-4.14 through 4.16. Further, Article VIII, Section I of the New Jersey Constitution of 1947 requires uniformity in taxation except in limited instances. As such, tax abatements are permitted only for projects that fall under the following statutes: (a) Redevelopment and Housing Law, N.J.S.A. 40A:12-1 et seq., (b) Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., (c) Five Year Exemption and Abatement Law, N.J.S.A. 40A:21-1 et seq., and (d) New Jersey Housing and Mortgage Finance Agency Law of 1983, N.J.S.A. 55:14K-37. Thus, a municipality has no legal ability to offer a tax abatement except under the foregoing limited circumstances. Additionally, inclusionary subdivisions cannot secure nine percent tax credits and other HMFA subsidies under HMFA's regulations. Therefore, a requirement that all subdivisions provide affordable housing would classify them as "inclusionary" and thus disqualify the developer from securing tax credits and government subsidies.

RESPONSE: The rule will be revised in a future amendment to eliminate cost reduction examples that are outside the scope of the Council's jurisdiction. The State's residential site improvement standards already set forth requirements that have been designed to ensure that municipalities do not require unnecessary site improvements. Other proposed incentives will be strengthened in a proposed amendment that will require minimum presumptive densities in inclusionary zones. While the Council recognizes that an extension to a sewer service area is not possible for some locations of the State, septic systems may be possible in accordance with DEP's regulations. DEP has granted more than 100 permits for small and innovative technology wastewater treatment plants and is actively working with the Pinelands Commission to test the use of individual innovative septic treatment units on one-acre residential parcels. Municipalities may work with DEP to safely apply such technology to provide affordable housing in other parts of the State. Tax abatements and payments in lieu of taxes are limited to specific circumstances subject to specific statutory authorization but are used in some affordable housing applications. Finally, it appears that the commenter may have misinterpreted the intention of the use of zoning as a mechanism available for municipalities to address the affordable housing need. The rule does not suggest that all subdivisions provide affordable housing. Rather, the rule sets forth standards to be followed if inclusionary zoning is used by the municipality and further makes it clear that inclusionary zoning could apply to all or some zones within the municipality. It is a municipal decision to make that determination.

COMMENT: The municipality must allow alternate structure types and relief from certain bulk requirements, including coverage, density, lot area and lot frontage if the on-site construction alternative is going to be implemented. These mechanisms cannot be optional. The others pertaining to tax abatements, fees and financial aid could be. Reductions in parking standards are a separate RSIS issue and shouldn't be listed here.

RESPONSE: The Council will propose a future rule amendment wherein the language encouraging municipalities to consider attached housing options and other bulk standard revisions will be strengthened. Bulk standards must be revised to permit whatever increased densities are permitted in the inclusionary zoning ordinance. A future rule amendment will clarify that the bulk standards must be revised so as to permit the proposed zoning with the need for variances. Additionally, the reference to reductions in parking will be deleted.

N.J.A.C. 5:97-6.4(b)4 and 5

COMMENT: COAH should provide more guidance on crafting density and secondary compensatory benefits for residential development such as reduced setbacks, lot sizes, etc. Extending a compensatory benefit to a developer causes the density and bulk requirements to be violated throughout the entire proposed development. Under the MLUL, these density variance conditions would push all applications to the zoning board of adjustment which is not an appropriate way of potentially handling all future development applications. In addition, bulk requirements established by ordinance to fit the underlying established zoning density would no longer be applicable. On the contrary, the planning board would be forced to grant variances from bulk requirements on almost every application, even to the point of violating

Statewide standards such as those contained in the RSIS. Likewise, the proposed rules state that one of the incentives that can be granted is a tax abatement, which ignores the strict requirements of the Long-Term Tax Exemption law which allows tax abatements in only very specific circumstances. The end result will be that a municipality loses its ability to regulate growth and development in its town since it will no longer be permitted to enforce the bulk standards that it has established.

RESPONSE: The guidance provided in the rule is intended to be a generalized planning tool subject to further refinement by individual municipalities to ensure that density and bulk standards work with the prescribed densities. N.J.A.C. 5:97-6.4(b) specifically states that municipalities shall also evaluate the zoning to determine whether reduced setbacks, height and/or stories requirements, lot widths and/or lot sizes are necessary to accommodate the additional number of units permitted. It is incumbent upon the municipality to ensure that there are no conflicts between zoning requirements and bulk standards that would necessitate the grant of variances to approve conforming uses. It is recommended that the municipality consult with a licensed professional planner to review both the zoning ordinance and the bulk schedule contained therein. The reference to tax abatements will be deleted in the near future.

N.J.A.C. 5:97-6.4(b)5

COMMENT: This rule says that a municipality must evaluate zoning changes that are necessary to accommodate all the market units permitted by the ordinance "as of right" and the affordable housing units imposed on the market units. COAH must publish standards as to how this is done and require the municipality to develop the ordinance as part of its petition for substantive certification.

RESPONSE: The guidance provided in the rule is intended to be a generalized planning tool subject to further refinement by individual municipalities to ensure that density and bulk standards work with the prescribed densities. N.J.A.C. 5:97-6.4(b) specifically states that municipalities shall also evaluate the zoning to determine whether reduced setbacks, height and/or stories requirements, lot widths and/or lot sizes are necessary to accommodate the additional number of units permitted. It is incumbent upon the municipality to ensure that there are no conflicts between zoning requirements and bulk standards that would necessitate the grant of variances to approve conforming uses. It is recommended that the municipality consult with a licensed professional planner to review both the zoning ordinance and the bulk schedule contained therein.

COMMENT: Municipalities that fall under a regional planning agency such as the Pinelands Commission, Highlands Water Protection and Planning Council, Division of Coastal Resources of DEP, and the New Jersey Meadowlands Commission are usually unable to adjust or reduce bulk standards under the planning agency's overriding and preemptive jurisdiction. Moreover, the aforementioned regional planning agencies have failed to adopt regulations and policies to facilitate the production of affordable housing contrary to the Mount Laurel doctrine and the Fair Housing Act. This is why significant portions of the State have produced minimal affordable housing.

RESPONSE: In some cases, municipalities that fall under a regional planning agency's jurisdiction may not be able to provide all of the incentives set forth in the proposed rule. Where partial compliance is possible, the Council would consider the terms of a developers agreement as an alternative to zoning. The Council will enter into an MOU in the near future with the Highlands Council and intends to update existing MOUs with the Pinelands, the Meadowlands and the DEP.

N.J.A.C. 5:97-6.4(b)2 through 5

COMMENT: The commenter opposes these provision, which are cumbersome and unpredictable in operation. The approach taken in the Rounds One and Two regulation, N.J.A.C. 5:93-5.6, which established minimum density and set aside requirements for inclusionary developments, worked well and should be retained in the Third Round Regulation. Portions of the regulations that would (should) provide incentives and requirements for municipalities to meet their housing obligation by subsidized construction, redevelopment and rehabilitation should receive more emphasis both in

the planning stages and in the implementation of such plans. *Mount Laurel II* does *not* require that developers be given some benefit over and above what is required to make the project financially viable and the Appellate Division's unfortunately ambiguous language should have been read in light of this underlying constitutional rule. The proposed N.J.A.C. 5:97-6.4, by contrast, is complex and requires project-specific bargaining about "add-ons" that are described in the regulation only in generic terms.

RESPONSE: The rule will be the subject of a future amendment wherein the Council will propose increased minimum standards to require density bonus that reflects minimum presumptive densities for inclusionary zones based on SDRP Planning Areas and make it clear that different zones within each municipality may have different density increase and set aside requirements provided they are applied uniformly throughout each zoning district. Additional incentives, such as allowing alternate structure types (for example, duplex), revised bulk standards, relief from regulatory requirements that result in cost reductions, waived or reduced fees, tax abatements and/or direct financial aid in the form of a loan or grant to subsidize affordable housing production, are proactive steps that the Council believes municipalities must address to ensure the successful delivery of affordable housing. The use of these provisions must be set forth clearly in the municipal zoning ordinance to provide predictability for developers.

N.J.A.C. 5:97-6.4(b)7

COMMENT: Please provide any analysis the Council has performed on the subsidies required to build rental housing and explain the decision to increase the set-aside on affordable rental housing.

RESPONSE: Construction costs were assumed to be similar whether the units were for sale or rentals. Additionally, revenues generated by the sale of an affordable unit are generally equivalent to the capitalization of rental income. However, rental developments result in a longer term for the recoupment of investment capital. Therefore, the Council's experience has been that additional incentives are necessary to promote the production of affordable rental units. In recognition of the market dynamics associated with rental developments, the Council will propose a future amendment to require 12 units per acre with a maximum presumptive set-aside of 20 percent and reduced set-asides for affordable rental developments in qualifying census tracts.

COMMENT: A developer of rental affordable units should be entitled to a meaningful incentive. It is unclear whether the density bonus for rental affordable units must exceed the one additional market rate unit for every affordable unit built onsite. This would be satisfied if COAH adopted the 1.6 rental bonus credit set forth above in the comments to N.J.A.C. 5:94-3.6, 3.10(a), 3.11(a), and 3.12(a).

RESPONSE: The increase in density bonus referenced in the rental section of the rule was intended to be in addition to that which is required to produce for sale units. A future rule amendment will clarify this position as well as consider a reduced set-aside requirement of 15 percent of the total number of units in inclusionary rental developments in qualifying census tracts.

COMMENT: COAH should expand this section on zoning for inclusionary rental housing to allow a municipality to impose a higher affordable housing set-aside if COAH's requirement to increase the density on a site to a minimum of 10 units per acre represents greater than a 20 percent increase from the existing density on the site. Also, no other incentives besides the increase in density should be required in this situation.

RESPONSE: The rule will be the subject of a future amendment wherein the Council will consider minimum presumptive densities for inclusionary zones based on SDRP Planning Areas and additional incentives to encourage the production of rental housing.

COMMENT: The commenter supports the concept of the minimum density requirement for inclusionary zoning for rental housing of 10 units per acre. The commenter believes that the 10-unit per acre minimum density, coupled with the incentive of more than one additional unit per COAH unit, may in fact achieve constitutional compliance.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: This section allows an increased density for residential developments to encourage the provision of rental housing, but does not allow the developer to construct fewer affordable units than required prior to such additional density increase. The rules are unclear as to whether a municipality can include a reduced set-aside for rental units as an incentive for the provision of rental units, rather than a density increase. The regulation should be revised to require a municipality to give the developer any benefit, such as rental bonus credits, received by the municipality towards the municipality's projected growth share obligation and its actual growth share obligation as a result of the affordable housing contribution made by a developer.

RESPONSE: The rule will be amended in the near future to provide minimum presumptive densities and maximum presumptive set-asides for rental housing. With regard to rental bonuses, the rule will be amended to eliminate the provision that prevents the bonus from benefitting the developer. However, the commenter should note that the bonuses serve as incentives to municipalities to provide affordable housing and it is at the municipality's discretion as to how it wishes to apply such bonuses.

COMMENT: A municipality located entirely in Planning Areas 4B and 5, with no vacant or available land in a sanitary sewer service area and without a center, cannot fulfill its rental obligation through inclusionary developments at a proscribed density of 10 units per acre.

RESPONSE: For the purposes of validating zoning as a proposed mechanism to produce minimally required rental units, the rule will be revised in a future rule proposal to indicate that the Council shall generally accept such zoning when the zoning permits a minimum of 12 units per acre; **or** a fully executed agreement between the municipality and the developer or a planning board resolution approving the development and setting forth mutually agreed to terms for the production of a specified number of affordable rental units has been included with the fair share plan. This density standard is recognized by the Council as one which is likely to result in rental units. An agreement between the municipality and the developer or a planning board resolution approving the development are alternatives to the minimum density requirement. Other mechanisms, such as the market to affordable program, municipally sponsored construction and accessory apartment programs may be also used to produce affordable rental units. While the Council recognizes that an extension to a sewer service area is not possible for some locations of the State, septic systems may be possible in accordance with DEP's regulations. DEP has granted more than 100 permits for small and innovative technology wastewater treatment plants and is actively working with the Pinelands Commission to test the use of individual innovative septic treatment units on one-acre residential parcels. Municipalities may work with DEP to safely apply such technology to provide affordable housing in other parts of the state.

N.J.A.C. 5:97-6.4(b)7i

COMMENT: Zoning and land use development should be compatible with the existing neighborhood. The regulations should be amended to provide specific criteria to assess issues of compatibility.

RESPONSE: The rule provides general guidance on the criteria the Council will use to evaluate whether proposed inclusionary zoning provides a realistic opportunity for the construction of affordable housing. In considering the use of inclusionary zoning as one of the many tools available to address a municipality's affordable housing requirements, local decision makers are best qualified to make determinations such as compatibility with existing neighborhoods.

N.J.A.C. 5:97-6.4(b)8

COMMENT: This regulation restricts the municipality from collecting a payment in lieu of construction unless the development of an individual parcel of land accommodates five or more dwellings units. For developments less than five dwelling units, the regulation limits the municipality to collecting a development fee. COAH's regulations require a municipality to produce growth share affordable housing irrespective of the number of units that are constructed in a

subdivision. N.J.A.C. 5:97-8.4(c) limits the use of payments in lieu of construction to eligible affordable housing activities within the municipality. It is incongruous for COAH to limit the number of units for which a payment in lieu of construction may be collected while at the same time limiting use of payment in lieu funds to eligible affordable housing activities in the municipality. The incongruity is twofold: (1) no matter what size the development, COAH rules assess a growth share obligation; and (2) the allowable development fees on developments less than five units are not adequate to pay for construction of affordable units within the municipality. This limitation against collecting payments in lieu is unreasonable and appears to be arbitrary. The regulation should not be adopted in light of the very significant costs to produce of affordable housing that are being passed to the local taxpayer in these situations. The town should be able to assess payments in lieu of construction on all new development that results in growth share affordable housing obligation. COAH should consider that if its rules count new dwellings replacing a demolition against the municipality (that is, one-quarter unit of affordable housing); then the municipality should be permitted exact a payment in lieu of construction equal to the amount of one-quarter of the actual cost to construct an affordable unit within the municipality.

RESPONSE: In *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1, 69 (App. Div. 2007) *certif. denied*, 192 *N.J.* 71 (2007) , the New Jersey Appellate Division stated that "any rule that permits municipalities to compel on-site affordable housing or payments in lieu thereof without any compensating benefits violates the fundamental principle of the Mount Laurel doctrine that ordinances create a realistic opportunity for the construction of the region's need for affordable housing." Practical implementation limitations on the development of smaller parcels preclude the ability of municipal zoning to provide adequate compensating benefits. For example, it is not possible to give the developer of a four lot subdivision a compensatory benefit that would result in a density increase that would allow the construction of 4.8 market-rate units. Thus the Council believes that minimum thresholds are necessary as a result of the impracticality of providing compensatory benefits to offset mandated affordable housing requirements or payments in lieu of constructing affordable housing. However, in establishing thresholds, municipalities may certainly include language that captures phased development. The Council appreciates the commenter's observation on unintended consequences and will strengthen the rule in a future amendment to specify that thresholds set shall include provisions to reserve the municipality's right to impose payments in lieu in the event the threshold is not exceeded initially but is subsequently exceeded through the future subdivision of remaining lands. In addition, the rule will be amended to provide guidance to municipalities when considering "d" variances pursuant to N.J.S.A. 40:55D-70. The amendment will enable municipalities to evaluate whether any increased number of residential units permitted on a site as a result of the grant of said variance could reasonably result in an opportunity to include affordable housing.

COMMENT: Municipalities should be granted the flexibility to require the inclusion of at least one affordable unit for development and redevelopment with fewer than five total units. In downtown areas, it may be difficult to find a small building that would have more than five units; therefore, as part of a downtown revitalization plan, a municipality should be able to require affordable units to be placed in buildings even if they do not have five units available. Most employment opportunities will occur in downtown areas, thus providing a reasonable approach to accommodating both redevelopment and workforce housing universally.

RESPONSE: The rule does not preclude municipalities from imposing higher set-asides or imposing set-asides on smaller sites provided adequate compensatory benefits have been provided. Additionally, the Council will propose a rule amendment that will provide guidance on capturing affordable housing opportunities when variances are granted, higher set asides that can be captured through the use of higher density bonuses and make it clear that different zones within each municipality may have different density increase and set aside requirements provided they are applied uniformly throughout each zoning district.

COMMENT: There should not be a mandatory requirement that municipalities set a minimum development size threshold below which no affordable housing is required. The rule should be amended to indicate setting a minimum threshold is discretionary and that sites not of a size sufficient to generate at least one affordable unit can be required to pay a pro-rata "fee in lieu" based on the number of units generated by the development. The author recognizes that

development fees (if enacted) could apply to projects below the threshold, but the municipality (not COAH) should be permitted to decide whether it will impose a pro-rata fee or a development fee.

RESPONSE: In *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing,* 390 *N.J. Super.* 1, 69 (App. Div. 2007), *certif. denied,* 192 *N.J.* 71 (2007) , the New Jersey Appellate Division stated that "any rule that permits municipalities to compel on-site affordable housing or payments in lieu thereof without any compensating benefits violates the fundamental principle of the Mount Laurel doctrine that ordinances create a realistic opportunity for the construction of the region's need for affordable housing." Practical implementation limitations on the development of smaller parcels preclude the ability of municipal zoning to provide adequate compensating benefits. For example, it is not possible to give the developer of a four lot subdivision a compensatory benefit that would result in a density increase that would allow the construction of 4.8 market-rate units.

COMMENT: This provision now shifts the burden of providing affordable housing further from the developer and more squarely on the shoulders of the municipality and taxpayer. Growth that generates an obligation at a rate of 25 percent will require a payment of 1.5 percent of the adjusted assessed value. This automatic exemption create a perverse incentive of four lot subdivisions throughout New Jersey, much like CAFRA generates development applications just beneath CAFRA review thresholds. This "development by review/fee avoidance" has no basis in rational planning and will create additional sprawl and wastes resources. The policy decision to exempt minor subdivisions should remain at the local level.

RESPONSE: The Council believes that minimum thresholds are necessary as a result of the impracticality of providing compensatory benefits to offset mandated affordable housing requirements or payments in lieu of constructing affordable housing. The requirement of one affordable unit among each five total units created (representing a 20 percent set-aside) coupled with density bonuses to provide one additional market-rate unit for each affordable unit presents rounding issues that can be addressed through the use of minimum thresholds. The developer of a three-lot subdivision can neither benefit from six-tenths of a bonus lot nor provide six-tenths of an affordable unit. However, in establishing thresholds, municipalities may certainly include language that captures phased development. In addition, the rule will be amended to provide guidance to municipalities when considering "d" variances pursuant to N.J.S.A. 40:55D-70. The amendment will enable municipalities to evaluate whether any increased number of residential units permitted on a site as a result of the grant of said variance could reasonably result in an opportunity to include affordable housing.

COMMENT: COAH's rules would prohibit a municipality from charging a full growth share subsidy on residential development that is four units or less. Assuming new development of homes with a market value on average of $ 400,000, a town may impose a 1.5 percent development fee that will generate a $ 6,000 development fee per home for total development fees of $ 24,000 for four homes. However, these four market-rate homes will generate a growth share requirement of one affordable unit. The Township would be precluded from imposing a growth share payment on each market-rate home of $ 36,475 which is one-quarter of $ 145,903, the allowed growth share payment for one affordable unit in Region 3 (Middlesex, Hunterdon and Somerset) according to COAH's rules at N.J.A.C. 5:97-6.4(c)5. The almost $ 122,000 difference in affordable housing subsidies from the $ 24,000 in development fees permitted to be charged versus the $ 145,903 in-lieu growth share payment not permitted is substantial and will only fall back on the shoulders of the taxpayers of the Township. There would be no other way to generate this needed affordable housing subsidy precluded by this rule. To make up the almost $ 122,000 difference, municipalities may be required to expend municipal revenues (which are already in short supply) in contravention of the Fair Housing Act at N.J.S.A. 52:27D-311. Even if considering this balance of $ 24,000 to fund other affordable housing mechanisms listed in COAH's rules, municipalities would not be able to fully fund a one-unit RCA (at a cost of $ 67,000) or the construction of a new unit. Although the $ 24,000 could fund the rehabilitation of a unit, this rehabilitation would not address the new construction obligation generated by the four new market-rate homes. The $ 24,000 could fund a moderate-income accessory apartment ($ 20,000 minimum), but not quite a low-income accessory apartment ($ 25,000 minimum). There would not be sufficient funds for a market to affordable program either - COAH's requires a minimum of $ 25,000 for a moderate-income unit and a minimum of $ 30,000 for a low-income unit (oftentimes it may actually cost up to $

100,000 or more per affordable unit in this program).

RESPONSE: The Council believes that minimum thresholds are necessary because a municipality must make the provision of affordable housing realistically possible on a site. A municipality may not require a payment in lieu of construction. However, the Council will propose a future rule amendment that will provide guidance on capturing affordable housing opportunities when variances are granted, which would create opportunities for affordable housing even in small developments.

N.J.A.C. 5:97-6.4(b)9

COMMENT: "Zoning in non-residential districts shall provide an increase in permitted floor area with proportional increases in allowable height and/or impervious coverage to offset the cost of any affordable housing requirements." The commenter does not understand this; affordable housing should by definition be in residential (or mixed-use) districts. How can one have affordable housing requirements in a non-residential district? By the nature of the district, the construction of housing is not a permitted use. The developer would have to apply for a use variance to construct (affordable) residential units in a non-residential district, which is usually bad planning (and not in accordance with principles of environmental justice). If he were not permitted to build the affordable units, he could sue not to be charged a payment in lieu, since he was not afforded a real choice. Therefore the only requirement related to affordable housing would be the development fee.

RESPONSE: The intent of the rule was to call municipal attention to the planning issues that must be addressed if the municipality believes that developments in non-residential zoning districts could result in affordable housing opportunities that could be permitted on or off site. Applying inclusionary development standards in what has been a non-residential zoning district would result in a mixed use zoning district. The rule will be amended in a future rule proposal to clarify that this zoning tool is permissive and that the municipality may permit affordable housing to be provided on or off site and may include a payment in lieu of providing affordable housing option. In such instances, the zoning shall follow the Council's mixed use standards. Where affordable housing is not required in a non-residential district, the ordinance may require the payment of a development fee pursuant to N.J.A.C. 5:97-8.3.

COMMENT: COAH should provide more guidance on acceptable compensatory benefits, especially for a growth share imposition on a non-residential development. In many cases, the permitted floor area is the maximum a site can handle without going to structured multi-level parking, steel construction and underground stormwater retention facilities. All of these options may not be appropriate for the circumstances of the municipality and may be too cost prohibitive to the developer. Additionally, for many non-residential uses it would not be practical to add additional floors (that is, warehouses, factories and retail in suburban municipalities.) Many municipal zoning ordinances already allow a developer to effectively lessen the off-street parking standards by permitting banked parking.

RESPONSE: The minimum prescribed increase in FAR should be sufficient to equate to one affordable unit for every 16 jobs associated with the non-residential development. However, the value of non-residential space is more variable than the value of residential space due to varying uses. Moreover, the number of jobs generated, and consequently the number of affordable units required, also varies by the use of the proposed development and various uses are frequently permitted in any one non-residential zone. Consequently, the Council has determined that providing precise guidance to municipalities is not practical.

COMMENT: As for non-residential development, the commenter supports a proposed legislative solution that would require all non-residential development to pay an affordable housing trust fund fee of 2.5 percent of the equalized assessed value of the non-residential development. Otherwise, this rule proposed will provide a substantial disincentive for non-residential development in New Jersey. The commenter has already experienced projects that have been abandoned as a result of the requirement that the non-residential developer pay an "in lieu" fee. For example, a 50,000-square-foot office building project in Monmouth County has been abandoned as a result of a COAH fee of $ 1,050,000, or an additional pre construction cost of $ 21.00 per square foot. New Jersey is already at a competitive

disadvantage with neighboring states due to high land costs and taxes. To add an "in lieu" fee of this magnitude would destroy the New Jersey commercial office and retail market.

RESPONSE: Comments on proposed legislation are outside the scope of the proposed rule. Municipal ordinances that impose affordable housing requirements on non-residential developments must also provide a compensatory benefit in the form of increased floor area and other cost reducing benefits that will offset expenses associated with affordable housing requirements. Where land uses are compatible, many municipalities also provide on-site production options that may prove to be less costly than payments in lieu. In these cases, payments in lieu are an option chosen by the developer.

COMMENT: The rules (N.J.A.C. 5:97-6.4(b)9) require the municipality, in conjunction with non-residential applications for development, to provide increased floor area, height and coverage to offset cost of any affordable housing requirements. The rules provide for developer discretion on residential and non-residential incentives. This also treats affordable housing development differently from other developments and overrides municipal zoning authority by providing developer discretion as to the desired incentives.

RESPONSE: The provisions a municipality includes in its ordinance must apply uniformly to each zone in which affordable housing is required. This ensures that all types of development within a particular zone are treated identically. As this is the basic intent of zoning, the Council does not believe that it overrides municipal zoning authority by providing developer discretion as to the desired incentives. The rule will be amended to require that the zoning ordinance shall clearly set forth additional incentives that are being provided.

N.J.A.C. 5:97-6.4(b)9 and 10

COMMENT: How will the actual cost to produce an affordable housing unit be verified and how will this be translated into an increased floor area ratio and/or impervious coverage? Has COAH analyzed the implications of this provision for municipalities within the Highlands region? What is the process if the increased FAR triggers a "d" variance?

RESPONSE: The minimum prescribed increase in FAR should be sufficient to equate to one affordable unit for every 16 jobs associated with the non-residential development. However, the value of non-residential space is more variable than the value of residential space due to varying uses. Moreover, the number of jobs generated, and consequently the number of affordable units required, also varies by the use of the proposed development and various uses are frequently permitted in any one non-residential zone. In areas impacted by restrictions imposed by the Highlands Council, these issues are further complicated. Consequently, the Council has determined that providing precise guidance to municipalities is not practical. However, it should be noted that many zoning ordinances may prohibit housing of any type, including affordable housing, in zones that are not designed to be mixed use in nature or permit affordable housing to be provided off-site. Therefore, increases in FAR would only be a viable mechanism for capturing affordable housing in mixed use zoning districts, non-residential zoning districts where affordable housing was permitted off site or districts that are proposed for re-zoning to mixed use zoning districts. It is important to note that the density incentives required to validate the financial feasibility of affordable housing requirements would be permitted by zoning and, therefore, not require any variances. The commenter is also referred to Assembly Bill A-500 which would prohibit payments in lieu to be assessed on non-residential development and would instead impose a Statewide non-residential development fee of 2.5 percent of the development's equalized assessed value.

COMMENT: The regulation should be revised to clarify that municipalities requiring affordable housing contributions from non-residential development and mixed-use developments shall be required to increase the floor area ratio (FAR), or offer other incentives which provide an actual financial benefit to the non-residential developer in an amount greater than the cost of the affordable housing contribution.

RESPONSE: The rule clearly indicates that inclusionary zoning in non-residential and mixed used districts shall

incorporate residential density increases and/or shall provide an increase in permitted floor area with proportional increases in allowable height and/or impervious coverage to offset the cost of any affordable housing requirements.

N.J.A.C. 5:97-6.4(b)10

COMMENT: Municipalities should not be required to give developers residential density increase and non-residential floor area increase options to be exercised at the developer's discretion. If the zoning has provided sufficient compensatory benefits, that should be enough. Granting developers this option undermines municipal planning and smart growth. Infrastructure and facilities planning are based on projected development that assumes development under the existing zoning. Since COAH has now mandated a two-tier zoning scheme, how will municipalities know what level of development to expect so that they can plan accordingly? Moreover, the two-tier approach can lead to overzoning, at least if the fair share plan must assume affordable housing generation at the first tier rather than enhanced intensity level, and COAH cannot require overzoning. This section should be deleted. Instead, COAH should limit the set aside in mixed use developments to 20 percent of the residential units, with no growth share generated by the non-residential space. Doing so will ensure that such developments are viable and not disproportionately loaded with affordable units so as to render the marketability of the market units questionable and thereby discourage these kind of smart growth initiatives.

RESPONSE: The intent of the rule is to provide as much flexibility as possible in recognition that mixed use developments can be complex and vary greatly with regard to how much of the individual development is residential and how much is non-residential. While the rule points to the residential density increases and affordable set-asides required by the proposed N.J.A.C. 5:97-6.4(b)2, no clear standards exist for determining precisely what types of floor area ratio increases are necessary to provide adequate compensatory benefits for non-residential developments that provide affordable housing. It was precisely with the same concern as the commenter's in mind that the Council proposed to require that any municipal mixed use zone consider the financial feasibility impact of mixed use districts by setting forth non-residential density increases the municipality is able to accommodate. The intent of the requirement is for the municipality to be in control of what options would be permitted with the choosing of those options to be at the developer's prerogative to accommodate the varying circumstances in mixed use developments in keeping with the general principles of form based zoning. The rule will be amended in the near future to add language to specify that permitted non-residential floor area increase options shall be clearly delineated in the zoning ordinance.

N.J.A.C. 5:97-6.4(b)11

COMMENT: COAH must develop a transparent system of standards that provide an incentive to build affordable housing. COAH cannot require developers to appeal COAH's rules to a municipality or COAH on a site by site basis in order to receive the required density bonus. The appeals system COAH has established is a prescription for delay that will discourage most potential developers of affordable housing. If COAH does not modify its rule, COAH must establish the forum to hear appeals. COAH must establish criteria and procedures that must be used in hearing the appeals.

RESPONSE: This rule will be amended in the near future to delete this provision.

COMMENT: The issue of immunity from builder's remedy lawsuits is clouded by language in N.J.A.C. 5:97-6.4(b)11 stating "inclusionary zoning ordinances shall include a provision for developers to appeal the economic feasibility of such zoning to demonstrate that the increased densities and/or reduced costs do not provide an appropriate level of compensation commensurate with the amount of affordable housing required." Once a municipality's growth share ordinance is approved by COAH, no one-on-one appeal process should be afforded. COAH's proposed rules will allow a development applicant to appeal the economic feasibility of growth share zoning to demonstrate that the increased densities and/or reduced costs do not provide an appropriate level of compensation. This language dilutes the effectiveness of substantive certification, is problematically vague, and will potentially result in conflict between community's developers, thus putting an undue burden on community's to defend their right to established planning

ordinances. How would this provision work in light of the requirements of the Municipal Land Use Law (MLUL)? COAH must identify specific criteria here if their certification is going to have any long term meaning and effectiveness. It is unclear what exactly will be sufficient "compensation" for affordable housing construction, since it appears that the "bonus unit" is arguably not sufficient. To avoid potential costly litigation, COAH should initially provide more guidance in the compensatory benefits that are acceptable.

RESPONSE: The rule will be amended in the near future to delete this provision.

COMMENT: This section would allow a developer to argue for "d" variance for additional density solely on grounds of profitability or the amount of profit. In accordance with the MLUL (N.J.S.A. 40:55D-1 et. seq.), the "special reasons" for granting a "d" variance are in three categories of circumstances; (1) use inherently serves the public good; (2) property owner would suffer "undue hardship"; and (3) that the proposed site is particularly suitable for the proposed use. The applicant (developer) shall also satisfy the "negative criteria" - that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. The courts have held that the provision of affordable housing for low and moderate income persons is a promotion of general welfare but the courts have not supported the argument that the inability to make certain level of profit is a special reason. Per William Cox, the following case law supports the position that the inability to make certain level of profit is not a "special reason": *Charlie Brown of Chatham v Board of Adjustment*, 202 *N.J. Super.* 312, 329 (App. Div. 1985); *Cerdel Constr. Co., Inc. v. East Hanover Tp.*, 86 *N.J.* 303, 307 (1981); *Bern v Fair Lawn, 65 N.J. Super*. 435, 450 (App. Div. 1961). In addition in the *Medici v. BPR Co.*, 107 *N.J.* 1, 9 (1987) case, the court held (per William Cox) "That a parcel of land is zoned so as to preclude its most profitable use or even any economically feasible use has not been held in any reported decision to justify a subsection (d) variance; alleviation of economic hardship is not a purpose of zoning or by itself a special reason for a use variance." Therefore, this provision should be eliminated as it is contradictory to case law and the MLUL.

RESPONSE: The rule will be amended in the near future to delete this provision.

N.J.A.C. 5:97-6.4(c)

COMMENT: It is short-sighted to penalize both developers and municipalities for constructing affordable units off-site. Where on-site land costs substantially exceed the cost of land elsewhere in the municipality developers and municipalities could cooperate to provide more off-site affordable units, thereby increasing the municipality's (and the State's) stock of affordable housing. Developers would not be inclined to exercise the option to build off-site because of the fewer financial incentives offered by paragraph (c)1, and municipalities would be discouraged from producing more units off-site because, under paragraph (c)4, the municipality's growth share obligation would be increased because it cannot deduct the additional market-rate units. It should not matter to COAH whether units are produced on-site or off-site; COAH should utilize every tool at its disposal to maximize the number of affordable units within a municipality.

RESPONSE: The rule will be amended in the near future to delete the reduced financial incentive when a payment in lieu optim is utilized.

COMMENT: The in lieu contributions are based on detached single family homes. It seems illogical that an in lieu payment for a rental apartment would be the same as a single family detached home that could be several times the size. The commenter recommends that an in lieu payment for a rental community be one-half the payment currently proposed.

RESPONSE: The payment in lieu of construction standards set by the Council are not based solely on single-family detached housing prices. The standards were derived using the lowest quartile of new residential construction for each COAH Region as reported through the New Home Warranty Program. The base data included all types of new home construction. The Council believes that its use of data reflecting the lowest quartile of new construction values provides

the best available source of information for determining regional subsidy amounts necessary to create new affordable housing.

COMMENT: N.J.A.C. 5:97-6.4(c) states that development can be eligible for payment in lieu, but still at "developers option." The rules state that if a payment is made and affordable units onsite are replaced with market rate, then there is a contribution to the growth share. This allows a developer to choose an option which generates growth share units without having to build them on site. The obligation then accrues to the municipality.

RESPONSE: This rule will be amended in the near future to delete this provision.

COMMENT: The new standard for "payments in lieu" (that is, the cost of constructing an affordable unit) averages $ 161,000 per affordable unit. It is commendable that COAH has established a standard for each COAH region. The $ 161,000 average reflects real costs and ends the problematic practice of each local municipality setting its own price.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: While construction of on-site affordable units is desirable, the disincentives for payments in lieu seem unreasonable. The senior affordable unit cap discourages building onsite affordable senior units and it is unreasonable to expect family affordable units to be commingled within a senior development. If a town is at its senior affordable cap, it will be prudent for market rate senior developments to contribute payments in lieu to be used to construct family affordable units elsewhere. In addition, for a majority of New Jersey it is unrealistic to expect non-residential development to yield on-site affordable housing to meet their growth share obligation. Likewise, the payment in lieu option should be structured to acknowledge this reality rather than providing obstacles/disincentives.

RESPONSE: The rule will be amended in the near future to delete this provision. Further, N.J.A.C. 5:97-8.4(c) has been clarified to permit non-residential payments in lieu to fund RCAs.

COMMENT: It is not clear that a payment in lieu of construction can be imposed on non-residential development. This confusion is heightened by the page on COAH's website described as "COAH proposes New Third-Round Rules." Specifically, one of the bullets indicated "Municipalities may continue to require payments in lieu of non-residential developers pending adoption of legislation establishing a statewide development fee bank." Yet the Economic Impact statement referenced above puts the opposite interpretation on the statement. Nowhere in the proposed regulations is there a reference to the statewide development fee bank, or to a municipality's ability to continue payments in lieu of construction for residential development.

RESPONSE: The Statewide development fee is a legislative proposal (A500). The Council's rules continue to permit a payment in lieu to be imposed on non-residential development, providing housing is a permitted use either on-site or off-site. A compensatory benefit must be provided to the developer.

COMMENT: This section of the proposed rules also states that the affordable requirement shall be calculated on the pre-existing zoning. How is this calculated if the pre-existing zoning was not residential? What if the pre-existing zoning was already at a high density and in order to yield affordable units the municipality wants to amend the zone to make it inclusionary with a payment in lieu option? Would this be permissible? As written, this provision seems to fit only a few real life scenarios.

RESPONSE: The rule has been written to accommodate a variety of potential scenarios. If pre-existing zoning is non-residential, the affordable housing requirement for the purposes of establishing density increases would be based on the application of jobs per square foot ratios depicted in Appendix D. The intensity of pre-existing zoning is not a relevant factor in determining the addition of one market-rate unit for each affordable unit required. If the pre-existing zoning has already been increased to accommodate affordable housing as a result of prior round municipal affordable housing initiatives, no additional density bonus or set aside is required to determine the feasibility of the zoning. The rule will be amended in the near future to provide presumptive minimum densities by SDRP planning area.

COMMENT: A municipality should be permitted to allow off-site construction of affordable units when warranted. There may be legitimate reasons for the construction of affordable units elsewhere within a municipality, and the rule should not inhibit creative implementation of fair share plans.

RESPONSE: The rule clearly indicates that affordable units may be provided on site or off site.

COMMENT: The rules should allow municipalities to impose an affordable housing obligation, or an increased obligation, in the case of variance approvals that increase the density or floor area beyond that otherwise permitted, or that change the permitted use on the property in such a manner as to provide a financial incentive, regardless of whether the property is within an inclusionary zone or not.

RESPONSE: The Council's rules do not preclude municipalities from imposing affordable housing obligations or increased obligations in the case of variance approvals. The commenter is referred to the provisions of the Municipal Land Use Law at N.J.S.A. 40:55D-70(c)2. However, it should be noted that variance applications can be neither predicted nor encouraged. Consequently, while affordable units could be captured as a result of variances, it would not be possible for the Council to recognize those units in advance of the units being captured.

COMMENT: The payment in lieu amounts established by the proposed rules are insufficient to cover the actual costs of construction in communities with very high land values. If growth share generating non-residential construction does take place, the local taxpayers will have to bear the cost of the shortfall between the N.J.A.C. 5:97-6.4(c)5 subsidization number and actual construction cost. Municipal planning will provide for use of fees and payments already received for other affordable housing purposes. There is no apparent way for municipalities to close this gap without expending other public funds, which municipalities are expressly not required to do under N.J.S.A. 52:27D-331(d).

RESPONSE: Following the directive of the court in the matter of *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007), the Council determined that more specific guidance was necessary to ensure the uniform application of affordable housing requirements throughout the state and to provide predictable reliability for developers. Regional differences in construction costs and the ensuing tie to regional median income for the purpose of determining affordable pricing provide the best statewide standard that can be met without conducting 566 individual analyses. In extreme cases where a municipality can demonstrate that the proposed payment in lieu standards would be insufficient to foster the production of affordable housing, a waiver may be sought pursuant to the provisions of N.J.A.C. 5:96-15.

COMMENT: Funds collected from developers in lieu of providing affordable housing on site should be permitted to be used for any affordable housing activity, including RCAs, new construction and rehabilitation, etc. COAH's focus should be on whether the community has provided its fair share of affordable housing in compliance with COAH rules, and all available tools to finance the housing, whether provided in the community or the subject of a RCA, should be available. For example, a municipal fair share obligation might be satisfied with two components: an RCA and an accessory apartment program. An RCA unit is about three times the cost an accessory apartment. If the municipality also enacted zoning in one or more zoning districts permitting a fee in lieu of affordable housing construction, any funds paid by a developer could only be used to pay for the accessory apartment program and not the RCA. The rule results in a tax burden to the community and is not based on any underlying principle that furthers the provision of affordable housing.

RESPONSE: The rule will be clarified in a future proposal to indicate that payments in lieu resulting from non-residential development may be used to fund RCAs. However, the Council believes that when a municipality has zoned to accommodate affordable housing, it has done so after identifying sites that are appropriate for affordable housing development that the Housing Element of the Master Plan envisions as an integral part of addressing affordable housing need within the municipality. The Council believes that if affordable housing is not produced on site in a residential or mixed-use development, it should be used elsewhere in the municipality to provide affordable housing

opportunities in keeping with the growth share concepts. Any tax burden that results from the use of RCAs over other more economical approaches would be the result of local decisions and can not be attributed to the Council's rules.

COMMENT: The new regulations create an extremely high burden upon persons willing to construct a new residential dwelling. By increasing the amount required to be contributed for the construction of affordable housing, the construction of any new residential housing, single family or multi-family, will actually be prevented. If there is no development, there will be no affordable housing constructed.

RESPONSE: Payments in lieu of constructing affordable housing, if permitted by local ordinance, are an option to be exercised by the builder. If affordable housing can be constructed on site for less than the cost of the assessed payment in lieu, the builder may build affordable units on site. Additionally, the rule will be the subject of a future amendment wherein the Council will consider increased minimum standards to provide minimum presumptive densities for inclusionary zones based on SDRP Planning Areas.

N.J.A.C. 5:97-6.4(c) and (g)

COMMENT: The commenter believes that the formulas provided by the Council regarding the payment in lieu of construction are excessive and unenforceable as applied, without consideration of additional density bonus to help offset these costs. In particular, the proposed payment in lieu amount for COAH Regions One and Six is in excess of $ 180,000, rendering an assessed fee in the amount over $ 40,000 per housing unit.

RESPONSE: Payments in lieu are an option given by the municipality but the ultimate decision to exercise the option lies with the developer. The Council's analysis has indicated the published payment in lieu standards reflect actual affordable housing costs in each region. Further, the rule will be amended in the near future to provide presumptive minimum densities based on SDRP planning area.

N.J.A.C. 5:97-6.4(c)1

COMMENT: "The affordable requirement shall be calculated on the existing zoning." Is that calculated on the gross area of the tract, or on the number of units which could reasonably be constructed, after subtraction for wetlands, streets, detention basins, etc.?

RESPONSE: The affordable housing requirement is based on the number of units that could be built on a site before changing the zoning to accommodate affordable housing. The intent of the regulation was to use the density of a site before the application of a density bonus and affordable housing requirement is applied. The issue of whether this represents a gross or net density depends in part on the type of zoning employed in the existing zoning. For example, some zoning simply sets forth a minimum lot size and does not dictate a density while other zoning may specifically establish a density in terms of units per acre. Most municipalities recognize general parameters for the conversion of minimum lot size to an approximate net lot yield after accounting for roads, stormwater management and irregular lot size. For example, many municipal ordinances recognize that one acre minimum lot sizes would likely result in approximately 80 one-acre lots on a 100-acre site. Other municipalities have already taken this into consideration by making 40,000 square feet the minimum lot size (commonly referred to as a "builder's acre") in a "one-acre zone" recognizing that the 3,560 square foot difference accounts for roads, stormwater management and irregular lot sizes. Alternatively, when density is used rather than lot size, gross density must be permitted provided the units can fit on a property. Four-unit-per-acre zoning could result in anything from four 10,000-square-foot lots on an acre to a cluster of four attached townhouse units and significant amounts of open space on one acre.

COMMENT: A developer's incentive should not be reduced for making in-lieu payments. The whole goal is to have more affordable units built either on-site or off-site. Where it's done should not matter.

RESPONSE: The rule will be amended in the near future to delete this provision.

COMMENT: This section, which addresses zoning for inclusionary development, reduces the density bonus provided developers if the inclusionary housing is constructed off site or is accomplished via a payment in lieu option. Reducing the bonus will make development of the site less likely and reduce affordable housing opportunities. It may be to a municipality's advantage to allow the density transfer as part of its comprehensive affordable housing plan. In the event a municipality has an approved housing plan and is in agreement with a developer for the transfer of the housing off site through construction or in lieu contribution for construction elsewhere in the municipality, there should be no reduction in density bonus.

RESPONSE: The proposed rule was intended to be permissive to give municipalities a policy tool that could be used to encourage on site production by allowing municipalities to offer a reduced financial incentive as a condition if a developer chose an option to make the affordable units the subject of a payment in lieu or provide affordable units off site. The rule will be amended in the near future to delete the reduced financial incentive when a payment in lieu option is utilized.

N.J.A.C. 5:97-6.4(c)3

COMMENT: This section establishes that a developer would have the option to make a payment in lieu as opposed to constructing affordable units. The provision appears inconsistent with N.J.A.C. 5:97-8.4, which allows the municipality to exercise the option. The option should belong to the municipality, especially with reference to residential developers, as many municipalities would rather the developer actually build the housing than contribute money.

RESPONSE: The municipality has the option to either permit or not permit a payment in lieu option in the ordinance. Once the municipality includes the option in its ordinance, it is the developer's choice of whether to exercise the option. Municipalities seeking to ensure that affordable units are built on site need not offer the option of payments in lieu in the zoning ordinance. The Council does not believe there are inconsistencies between N.J.A.C. 5:97-6.4(c) and 8.4.

N.J.A.C. 5:97-6.4(c)5

COMMENT: The N.J. Homeowner Warranty Program covers single family homes, two family homes, townhouses, cooperatives, condominiums, factory built and modular homes. The N.J. Department of Labor and Workforce Development has data regarding the type of residential housing units authorized by building permits for new housing construction for the years 1990 through 2007. Based on this data, 500,013 building permits for new residential construction were issued and 365,280 of these permits were for single family homes. Approximately 73 percent of the new housing construction permits were for single family homes. Thus, 73 percent of the construction costs reported to the Homeowner Warranty Program are for single family homes. These costs are not reflective of the costs associated with other forms of new residential construction (that is, Townhouses, condos, etc). For this reason, it is not appropriate to use one fee for payments in lieu for all housing types. Payment in lieu fees should be generated for specific housing types (that is, condos, townhouses, age-restricted, etc.). In short, the proposed payment in lieu fee for a developer of condos or townhouses is excessive as costs reported to the Homeowner Warranty Program are primarily derived from single family residential homes (73 percent).

RESPONSE: The proposed payment in lieu standard captures the commenter's concern by using the lowest quartile of data from the approximately 17,000 new home warranty records that were reviewed. This equates very closely to the comment's observation that "73 percent of the construction costs reported to the Homeowner Warranty Program are for higher priced single family homes."

COMMENT: In commercial developments where residential uses are inappropriate, the payment in lieu is required. For office buildings (UCC use group B), one affordable unit is required for every 5,714 square feet. Based upon the NJDCA Division of Codes and Standards, average cost of use group B construction is $ 214.00 per square foot

(referenced document attached). Therefore the average cost of constructing 5,714 square feet is $ 1,222,796 (5,714 x $ 214.00). The payment in lieu averages 13 percent of the construction cost of the building (using an average payment in lieu of $ 161,000). The payment in lieu fee will add an additional 13 percent cost to the project and will, in many instances, stop the project (that is, no new construction). Thus, the proposed payment in lieu fees will not create new affordable housing but will have the opposite effect by encouraging developers to build outside of the State. The net result is that new construction is discouraged and the states surrounding New Jersey will gain an economic advantage. Why build in New Jersey when it is 13 percent cheaper to build in Pennsylvania? The State's overall economy will suffer from these excessive fees and the Council will not achieve its goal of providing more affordable housing.

RESPONSE: The minimum prescribed increase in FAR should be sufficient to equate to one affordable unit for every 16 jobs associated with the non-residential development. However, the value of non-residential space is more variable than the value of residential space due to varying uses. Moreover, the number of jobs generated, and consequently the number of affordable units required, also varies by the use of the proposed development and various uses are frequently permitted in any one non-residential zone. Consequently, the Council has determined that providing precise guidance to municipalities is not practical. However, it should be noted that many zoning ordinances may prohibit housing of any type, including affordable housing, in zones that are not designed to be mixed use in nature or permit affordable housing to be provided off-site. Therefore, increases in FAR would only be a viable mechanism for capturing affordable housing in mixed use zoning districts, non-residential zoning districts where affordable housing was permitted off site or districts that are proposed for re-zoning to mixed use zoning districts. The commenter is also referred to Assembly Bill A-500 which would prohibit payments in lieu to be assessed on non-residential development and would instead impose a Statewide non-residential development fee of 2.5 percent of the development's equalized assessed value.

COMMENT: The Council should provide a more specific citation to the cost-containment provisions of DCA's Neighborhood Preservation Balanced Housing Program rules, N.J.A.C. 5:43, as the currently adopted rules do not appear to contain any cost-containment provisions.

RESPONSE: The cost-containment provisions of the Neighborhood Preservation Balanced Housing Program can be found at N.J.A.C. 5:43-2.4(a)1 through 6, and N.J.A.C. 5:97-6. (c)5 has been so clarified.

COMMENT: The commenter is opposed to a potential reduction in the amount of affordable housing subsidies that a town could impose on non-residential development if there is not a corresponding decrease in the affordable housing growth share obligation that non-residential development may generate. There is proposed new legislation that requires that all non-residential development across the State be charged an affordable housing development fee in the neighborhood of two percent to three percent of equalized assessed value (COAH's proposed rules would permit a non-residential development fee of three percent). Although not proposed as part of this rule proposal, this potential new legislation was described in COAH's letter of December 24, 2007 sent to all municipal mayors. Without a significant change in the affordable housing requirements of non-residential development as reflected in Appendix D, this reversion to only development fee collections will drastically undermine a municipality's ability to address the affordable housing generated from non-residential development. Prohibiting a municipality from requiring a non-residential developer to fully address its generated growth share with either the construction of actual affordable units or an in-lieu growth share payment will create a huge shortfall in the necessary affordable housing subsidies a municipality will need. For example, assuming an office space value of $ 300.00 a square foot and using COAH's proposed ratio of 5,714 square feet per one affordable unit, a town would be able to charge a development fee of three percent, thus generating development fees of $ 51,426 from this office developer to subsidize one affordable home, far less than the $ 145,903 needed according to COAH's rules at N.J.A.C. 5:97-6.4(c)5. The municipality won't be able to recoup the lost subsidy of $ 94,477 per affordable unit. Ultimately, any such shortfall in needed revenue to actually produce the affordable housing generated by this office developer will fall on the taxpayers of the municipality.

RESPONSE: While the proposed legislation is outside the scope of the Council's rule, the commenter should consider that municipal affordable housing plans are intended to be comprehensive in nature. It may not be possible for

each and every development within a municipality to provide the exact number of affordable units required as a result of that development. Conversely, there may be other developments within that same municipality where more affordable housing than the minimum required by the growth in that particular development can be provided. Comprehensive planning efforts will allow municipalities to obtain balance in local land use practices. The use of development fees, whether generated under the Council's authorization or future legislation, can be used as an additional tool to seek this balance.

COMMENT: A new payment in lieu schedule was created in response to the Appellate Court ruling overturning the previous schedule. The previous schedule was overturned because it lacked standards and because of the possibility that municipalities could make "unconscionable demands" designed to thwart development. As an example of excessive demands, the Court cited an ordinance that required $ 150,000 per unit. However, the lowest payment in lieu under the new schedule is almost as high, at $ 148,700, and reaches up to $ 182,859 per unit. Further justification for these new amounts should be provided in consideration of the Appellate Court ruling.

RESPONSE: No payment in lieu schedule has been a part of previous rules issued by the Council. Following the directive of the court in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super*. 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007), the Council determined that more specific guidance was necessary to ensure the uniform application of land affordable housing requirements throughout the state. The Appellate Division ruling did not indicate that a $ 150,000 payment in lieu was an excessive demand. Rather, the decision used $ 150,000 as the example of the fee set by one municipality to be compared with fees charged by other municipalities ranging from $ 35,000 to $ 466.00 per square foot. As explained in the rule, the guidelines for payments in lieu are based on the cost of constructing new residential units including the sum of development hard costs, related soft costs and developer's fees pursuant to the cost containment provisions used by the Balanced Housing Program and land costs equal to 25 percent of the first quartile of new construction costs as reported to the Homeowner Warranty Program. These costs were totaled by region to reflect average construction costs and then offset by estimated average regional maximum sale prices of newly constructed owner occupied affordable housing.

COMMENT: Greater explanation needs to be provided in terms of how the construction costs and affordable prices are established in each region resulting in the subsidy required to produce an affordable unit. Each municipality's affordable pricing is different based upon the COAH model. Construction costs also differ across regions. The Council should describe the source of information used to derive the construction costs and pricing, in order that the reasonableness of the numbers may be determined. Based on anecdotal evidence, it would appear the construction costs set forth are too low, and the affordable pricing too high, with a resultant understatement in the amount of subsidy required. At the very least, the use of averages will mean that 50 percent of municipalities will be required to rely upon property taxpayers to provide the true subsidy needed, which is in violation of the Fair Housing Act. The proposed numbers should merely be presumptive, and municipalities should be permitted to determine, by ordinance, the actual subsidy necessary based on construction costs and pricing of units within each municipality.

RESPONSE: Following the directive of the court in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super*. 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007), the Council determined that more specific guidance was necessary to ensure the uniform application of affordable housing requirements throughout the State. The regional "affordable price" figures have been calculated to reflect what the average sale price of an affordable unit would be in order to take into consideration that affordable unit owners contribute to the cost of providing affordable housing. Affordable prices are reflective of a prototypical development that incorporates minimum unit sizes based on Balanced Housing regulations and is fully compliant with UHAC, taking into consideration low- and moderate-income split, bedroom distribution and an average level of affordability equal to 55 percent of each regional median income. Regional differences in construction costs and the ensuing tie to regional median income for the purpose of determining affordable pricing provide the best Statewide standard that can be met without conducting 566 individual analyses. In extreme cases where a municipality can demonstrate that the proposed payment in lieu standards would be insufficient to foster the production of affordable housing, a waiver may be sought pursuant to N.J.A.C. 5:96-15.

COMMENT: COAH's initial determination of costs in Region 5 in the Chart that is provided cannot possibly be accurate with respect to Pinelands communities in Region 5 with lot sizes ranging from 3.2 acres to 40 acres +. Indeed, land costs alone exceed the projected total costs. Further, the initial payment in lieu (PIL) amounts shown in the Chart in N.J.A.C. 5:97-6.4(c)5 will likely force commercial developers to abandon New Jersey as a place to locate their businesses and eventually lead to the filing of a multitude of tax appeals that will have a devastating impact upon New Jersey's economy, a loss of much needed employment opportunities, and a loss and reduction of needed tax ratables. As an example, a Burlington County municipality in Region 5 is attempting to attract the construction of a 1,600,000 square foot warehouse/distribution center to its industrial zone. The community has a non-residential growth share ordinance and the use is permitted. The PIL obligation will be in excess of $ 24,000,000 based upon use group and square footage and the calculation for projected employees in Appendix D. It is economically infeasible for a warehouse developer/user to make a PIL in excess of $ 24,000,000 after factoring land acquisition and construction costs. Thus, the user or developer will abandon New Jersey in general and Burlington County in particular as a desirable location for its facility. This will result in a loss of ratables and jobs. Moreover, the PIL obligation will also devalue the land itself which will result in the filing of tax appeals which, if successful, will result in the further loss of desperately needed ratables to the municipality, school district, fire district and the county. This loss of funds must then be made up through other sources which means real estate tax increases for the remaining residential, commercial and industrial properties in the community.

RESPONSE: Following the directive of the court in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007), the Council determined that more specific guidance was necessary to ensure the uniform application of land affordable housing requirements throughout the state. Regional differences in construction costs and the ensuing tie to regional median income for the purpose of determining affordable pricing provide the best Statewide standard that can be met without conducting 566 individual analyses. In extreme cases where a municipality can demonstrate that the proposed payment in lieu standards would be insufficient to foster the production of affordable housing, a waiver may be sought pursuant to the provisions of N.J.A.C. 5:96-15. Additionally, municipalities should consider the financial viability of inclusionary zoning in specific districts when circumstances suggest that it may not be a viable approach to providing affordable housing. When this is the case, either enhanced zoning incentives in other more viable districts should be considered or other mechanisms that do not rely on inclusionary zoning should be considered.

COMMENT: The uncompensated cost of constructing affordable housing has a dramatic impact on the purchasers of market housing. The increased costs limit the pool of potential buyers and increases the risk of building housing.

RESPONSE: The rules include compensation to builders in the form of one additional market rate unit for each affordable unit constructed. However, the rule will be the subject of a future amendment wherein the Council will consider minimum presumptive densities for inclusionary zones based on SDRP Planning Areas.

COMMENT: Maximum payments in lieu of construction by housing region. The calculated amounts are inadequate to the cost for affordable housing production in individual municipalities and should be optional for use by a municipality, not mandatory when a municipality enacts ordinances to collect payments in lieu of construction. Based upon local land costs, land availability, existence or lack of utilities and utility capacity, and depending on the affordable housing technique that is most appropriate for a municipality; the cost of providing affordable housing will exceed COAH's proposed fixed amount of the allowable payment in lieu of construction. The rule should be flexible and allow the town to calculate the actual cost of affordable housing production in the municipality, and collect that amount in the form of a payment in lieu of construction. While many municipalities appreciate more guidance on the steps required to determine the proper payment in lieu amount, the numbers provided are another example of a one size fits all approach that does not take into account the differences of providing affordable housing in areas with or without sewer, water service and other infrastructure concerns. Site costs for the installation of septic systems and wells can far exceed those of tying into existing sewer and water infrastructure. Additional flexibility in determining the true subsidy required/PIL is necessary to meet local conditions.

RESPONSE: Following the directive of the court in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super*. 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007), the Council determined that more specific guidance was necessary to ensure the uniform application of land affordable housing requirements throughout the State. Regional differences in construction costs and the ensuing tie to regional median income for the purpose of determining affordable pricing provide the best Statewide standard that can be met without conducting 566 individual analyses. In extreme cases where a municipality can demonstrate that the proposed payment in lieu standards would be insufficient to foster the production of affordable housing, a waiver may be sought pursuant to the provisions of N.J.A.C. 5:96-15.

COMMENT: It is clear that COAH's standard for an in lieu fee is inflated and not supported by the record. It is based on land costs associated with single family detached homes. COAH must re-evaluate its in lieu fees to be consistent with the required subsidy articulated in the Econsult report and with the cost of a regional contribution agreement. COAH has inflated the land and construction costs associated with building an affordable unit. The required subsidy of building a reasonably sized affordable unit within a multi-family product is much closer to COAH's standard for a regional contribution agreement than its in lieu fee standards. There is no evidence in the record that the nature and magnitude of the in lieu fees are justified by any benefit to or burden caused by residential development.

RESPONSE: While construction and soft costs are relatively consistent throughout regions of the State, land values vary greatly throughout the state as well as within each region and even between different sections of one municipality. The payment in lieu standards were derived using 25 percent of the lowest quartile of new residential construction for each COAH Region as reported through the New Home Warranty Program. The proposed payment in lieu standard captures the commenter's concern by using the lowest quartile of data from the approximately 17,000 new home warranty records that were reviewed. The equates very closely to another commenter's observation that 73 percent of the construction costs reported to the Homeowner Warranty Program are for single family homes. Additionally, the minimum density bonuses prescribed by the Council in N.J.A.C. 5:97-6.4(b)2 help defray the costs of land when affordable units are built on site.

COMMENT: Add the following: "The in-lieu payment for rental projects shall be 1/2 the cost of the subsidy required/PIL amount." The method of calculating the in lieu of fees is discriminatory towards smaller, more affordable projects as it does not weight projects based on size, cost, profitability etc. Instead, all units are treated equally. For a rental project whose average unit is significantly smaller then a town home or single family home, the proportional per square foot cost of a payment in lieu is much higher. Why should a rental project, by its own nature a more affordable form of housing pay the same fee as a 2,000- to 4,000-square-foot home?

RESPONSE: Following the directive of the court in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super*. 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007), the Council determined that more specific guidance was necessary to ensure the uniform application of land affordable housing requirements throughout the State. The guidelines for payments in lieu are based on the cost of constructing new residential units including the sum of development hard costs, related soft costs and developer's fees pursuant to the cost containment provisions used by the Balanced Housing Program and land costs equal to 25 percent of the first quartile of new construction costs as reported to the Homeowner Warranty Program. These costs were totaled by region to reflect average construction costs and then offset by estimated average regional maximum sale prices of newly constructed owner occupied affordable housing. The Council appreciates the commenter's suggestion and will consider it in the future as part of periodic updates of this provision.

COMMENT: While many municipalities appreciate more guidance on the steps required to determine the proper payment in lieu amount, the numbers provided are another example of a one size fits all approach that does not take into account the differences of providing affordable housing in areas with or without sewer, water service and other infrastructure concerns. Site costs for the installation of septic systems and wells can far exceed those of tying into existing sewer and water infrastructure. Additional flexibility in determining the true subsidy required/PIL is necessary to meet local conditions.

RESPONSE: Following the directive of the court in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super*. 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007), the Council determined that more specific guidance was necessary to ensure the uniform application of land affordable housing requirements throughout the State. Regional differences in construction costs and the ensuing tie to regional median income for the purpose of determining affordable pricing provide the best statewide standard that can be met without conducting 566 individual analyses. In extreme cases where a municipality can demonstrate that the proposed payment in lieu standards would be insufficient to foster the production of affordable housing, a waiver may be sought pursuant to the provisions of N.J.A.C. 5:96-15.

COMMENT: Where does the number $ 87,065 come from as an affordable price? Can you tell me what it represents?

RESPONSE: The regional "affordable price" figures have been calculated to reflect what the average sale price of an affordable unit would be in order to take into consideration that affordable unit owners contribute to the cost of providing affordable housing. Affordable prices are reflective of a prototypical development that incorporates minimum unit sizes based on Balanced Housing regulations and is fully compliant with UHAC, taking into consideration low- and moderate-income split, bedroom distribution and an average level of affordability equal to 55 percent of each regional median income. COAH's online calculator can be used to replicate the results.

COMMENT: Payment in lieu amounts are by region. What is the rationale for Region 3 having the highest construction costs but the lowest payment in lieu amount?

RESPONSE: Region 3 has the highest construction costs but also has the highest median income in the State. After estimating regional construction costs, the amount of subsidy needed to deliver a newly constructed affordable unit was determined by subtracting revenues that a developer would receive from the sale of a unit. The net difference between sales revenues and development costs is the subsidy needed. The average affordable unit in Region 3, after accounting for the low/mod split and bedroom distribution requirements of N.J.A.C. 5:80-26 was calculated at $ 110,921.

COMMENT: The regulation should be revised to reduce the amount of the payment-in-lieu payments. The development community cannot make these payments and still make a financeable return. Furthermore, COAH's calculation of the payment-in-lieu amounts do not consider the availability of other funding sources and benefits available to affordable housing developments. The payment-in-lieu amounts should be revised to reflect the availability of these funding sources, which subsidize the actual costs of providing affordable housing units.

RESPONSE: The payment in lieu standards that have been set are the Council's best effort at setting regional standards that provide specific guidance to ensure the uniform application of affordable housing requirements throughout the State. Regional differences in construction costs and the ensuing tie to regional median income for the purpose of determining affordable pricing provide the best statewide standard that can be met without conducting 566 individual analyses. It should be noted that payments in lieu are intended to be an alternative to providing units on site. Additionally, it is important to note that the Council must determine realistic opportunity when certifying municipal plans. The underlying intent of inclusionary zoning is to present a self-sustaining internal subsidization that offsets the costs of producing affordable housing. It would be impractical to consider inclusionary zoning as providing a realistic opportunity if project success was predicated upon the unknown future availability of state and federal funding. Where it can be demonstrated that a lower payment in lieu amount is sufficient to construct an affordable housing unit off-site, but elsewhere within the municipality, the municipality may seek a waiver.

COMMENT: If a municipality has a program for providing affordable housing for which it plans on using in lieu contributions, and the pro forma for that program indicates a higher per unit cost for producing the affordable units than the pre-set costs set forth in this section, the municipality should be permitted to substitute the higher actual costs of constructing an affordable unit through that program for the pre-set costs set forth in this section.

RESPONSE: Following the directive of the court in the matter of *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007), the Council determined that more specific guidance was necessary to ensure the uniform application of affordable housing requirements throughout the state and to provide predictable reliability for developers. Regional differences in construction costs and the ensuing tie to regional median income for the purpose of determining affordable pricing provide the best statewide standard that can be met without conducting 566 individual analyses. In extreme cases where a municipality can demonstrate that the proposed payment in lieu standards would be insufficient to foster the production of affordable housing, a waiver may be sought pursuant to the provisions of N.J.A.C. 5:96-15.

N.J.A.C. 5:97-6.4(d)

COMMENT: The schedule for affordable housing production should be revised so that the number of affordable dwelling units constructed is never in arrearage more than one affordable unit behind the obligation being generated by the market rate component of the project constructed. Example of the rule as written: 24 units of a 100-unit residential subdivision are constructed; the rule as written permits the developer to construct no affordable units where a growth share obligation of six affordable units has been incurred. The rule should be rewritten so that "for every four market rate units constructed, and before a 5th market rate unit may receive a certificate of occupancy, the growth share affordable dwelling unit shall receive a certificate of occupancy." This will ensure that the growth share obligation is delivered in accordance with the delivery of market-rate units, and that the municipality will not be left with the responsibility of delivery of the affordable units in situations where the developer fails to construct the required unit(s).

RESPONSE: The phasing schedule employed by the Council since 1987 has generally worked well. The schedule has been retained in its former form in consideration of the limited number of cases in which it has been problematic, the high success rate in generating affordable units and to recognize the flexibility needed to accommodate construction scheduling.

COMMENT: How can rental units in an inclusionary development be integrated with the market-rate units when, under current HMFA statutes and regulations, payment in lieu of taxes (PILOT) agreements require that the affordable units be on one tax lot, and thereby segregated?

RESPONSE: Most affordable units are not constructed under programs requiring payment in lieu of taxes. The rule clearly indicates that the requirement to fully integrate the low- and moderate-income units with the market units is a required provision in inclusionary zoning ordinances and that the requirement is "to the extent feasible."

N.J.A.C. 5:97-6.4(e)

COMMENT: COAH's encouragement for inclusionary developments to be in conformance with the general policies and implementation mechanisms regarding design in the State Development and Redevelopment Plan is too vague to be truly useful to a development review board. COAH should provide a few specific development guidelines.

RESPONSE: The rule will be amended in the near future to use the term "consistent with." The Council's staff in the process of working with OSG staff towards the development of a "best practices" design guide.

N.J.A.C. 5:97-6.4(f)

COMMENT: This writer is pleased to see that COAH has required integration of the low and moderate income units with the market units, instead of continuing the practice of allowing them to be segregated.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The rule requiring full integration of affordable and market-rate units, to the maximum extent feasible, is a welcome addition to the rules, and will promote economic integration and greater public understanding of

the importance of affordable housing and acceptance of mixed income neighborhoods.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-6.4(g)

COMMENT: This is a good policy but it should be expanded to include reasonable access to transportation infrastructure, especially mass transit.

RESPONSE: The rule requires that inclusionary zoning ordinances require that affordable units have access to all community amenities available to market-rate units that are subsidized in whole by association fees and utilize the same heating source as market units within the inclusionary development. The provision of mass transit infrastructure is not a requirement associated with individual developments. However, the rule will be amended in the near future to provide an incentive to municipalities that provide affordable housing within a transit oriented

N.J.A.C. 5:97-6.4(i)

COMMENT: This comment pertains to the interaction of COAH's rules with the UHAC provisions. Developers of rental units have issues with the "at least 30 years" deed restriction on the affordability controls. There is no problem with applying this provision to sales units, because the municipality can simply fail to pass a resolution releasing the controls on such units and thereby keep them affordable. Since the individual homeowners bought their units at a restricted price, all that occurs is that they don't get a windfall. For owners of rental units, however, it is more problematic. Many developers are willing to develop rental units knowing the affordability controls will come off at the end of 30 years or shortly thereafter and they will have created additional retirement income for themselves or something to leave for their heirs. If the controls are never going to come off, you are less likely to get rental units.

RESPONSE: The comment is in reference to the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, which are promulgated by the N.J. Housing and Mortgage Finance Agency, not COAH. The Council will forward the comments to the Agency, who may address the concerns in a future rule amendment.

COMMENT: The low/moderate income split should be met in every municipality but should be permitted to be met on a municipal-wide basis, subject to certain limitations. Different types of affordable housing units may serve one segment of the need better than others, and this should be considered. For example, both one-bedroom and three-bedroom or larger rental units may be particularly suitable for low income households, while for-sale units may work better for moderate income households. Supportive living arrangements are already restricted to low income households only at N.J.A.C. 5:97-6.10(b)4. The rules already allow (at N.J.A.C. 5:97-6.8(c)3) that accessory apartments and buy down programs may be geared to either low or moderate income households or both. Perhaps this flexibility should be available in inclusionary developments and 100 percent affordable housing developments, too, as long as the required 50/50 split is maintained throughout the municipality. This flexibility should be available to municipalities not only going forward, but also for the crediting of existing units.

RESPONSE: The Council has historically considered these types of deviations from its rules on a case-by-case basis through the waiver process outlined in N.J.A.C. 5:96-15. This process has worked well and the Council will continue this process at this time rather than revise the rule. However, the issue of the low/moderate split for tax credit developments may be addressed in a future rule amendment.

N.J.A.C. 5:97-6.4(j)3 and 4

COMMENT: COAH must require a demonstration of site suitability for each site within an inclusionary zoning district.

RESPONSE: Specific sites are subject to the site suitability provisions outlined in N.J.A.C. 5:97-3.13. When

inclusionary zoning is proposed for larger areas that encompass multiple properties, it would be impractical to make such specific determinations without knowing which sites were going to both contribute to affordable housing need and production. In these cases, the Council believes that it is sufficient to rely on properly crafted zoning ordinances to ensure that obligations are fulfilled as growth occurs.

N.J.A.C. 5:97-6.5

COMMENT: N.J.A.C. 5:97-6.5 regards the status of sites addressing the prior round. The rules state that if a site has not developed, the municipality may be required to amend the plan to address the shortfall. The rules allow COAH to determine a lower number of units can be accommodated than was previously credited. This again penalizes a municipality for failure to develop property over which they do not have control. Rather than require the municipality to amend the plan, COAH should compel the landowner to commence the housing development per the housing plan.

RESPONSE: The rule clearly indicates that the Council will generally accept the ongoing viability of sites that were previously zoned to address the prior round obligation but remain un-built subject to the site or sites being evaluated at the time the municipality petitions for the third round to determine if the site continues to present a realistic opportunity for the construction of affordable housing. Decisions on applications for development on any un-built sites included in the prior round certified fair share plan will be reviewed to determine if there has been development proposed and, if so, whether difficulties that prevented the site from being developed arose during the development approval process. The Council will also review the site or sites to ensure that the site is a suitable site pursuant to N.J.A.C. 5:97-3.13 or whether the lack of development activity is more of a reflection of market conditions. Sites that continue to present a realistic opportunity to provide affordable housing will continue to be honored.

COMMENT: The criterion on "zoning" is inadequate and meaningless. At a minimum, COAH should examine inclusionary zoning, but the timing of its adoption is not that important. The key is whether the inclusionary zoning still creates the requisite realistic opportunity. This third criterion should be deleted.

RESPONSE: By definition, zoning that was included in a housing element and fair share plan that received prior round substantive certification or a judgment of compliance would have to have been adopted prior to the filing of a third round housing element and fair share plan. N.J.A.C. 5:97-6.5(c)3 will be deleted in a future rule amendment.

COMMENT: The commenter supports the continuation of the prior rules as it relates to prior round sites.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-6.5(a)2ii

COMMENT: It should be made clear that "development application" includes an application for "concept review" prior to the submission of formal preliminary and final subdivision or site plans. This provision has been the subject concern when municipalities who designated a parcel as inclusionary in their Compliance Plan to gain substantive certification or a Final Judgment of Compliance and Repose then seek to delete the site from their plans as soon as the developer submitted a "concept plan."

RESPONSE: The Municipal Land Use Law very specifically defines application for development as "an application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance or direction of the issuance of a permit. . ." N.J.S.A. 40:55D-3. The Municipal Land Use Law also makes it very clear at N.J.S.A. 40:55D-10.1 that informal reviews of concept plans are not binding on the applicant or the planning board. The owner or developer of a site included in a fair share plan may always seek intervention of the Council through the motion process outlined in N.J.A.C. 5:96-13. The Council's rule also makes it very clear that a municipality may not amend its zoning ordinance to remove the affordable housing requirement for sites that were subject to an agreement pursuant to the Council's mediation process or part of a

negotiated settlement in court and/or sites with filed development applications without consent of the property owner.

COMMENT: The rule should refer to a petition for the period 1999-2018, not 1999-2014, if COAH adopts 1999-2018 as the extent of the Third Round.

RESPONSE: The rule has been corrected to reflect to commenter's observation.

N.J.A.C. 5:97-6.5(b)

COMMENT: The regulation should be amended to require the municipality to give the owners of all unbuilt inclusionary sites written notice of the community's petition to COAH and allow the property owner an opportunity to comment.

RESPONSE: Pursuant to N.J.A.C. 5:96-3.7(a), the owners of un-built sites that were included in previously certified or court settled plans which were zoned for low- and moderate-income housing are required to be on the municipal service list service list.

COMMENT: A municipality should only be able to eliminate sites addressing the 1987-1999 obligation if it also has a plan to fulfill its full Third Round obligation. This should be part of COAH's analysis and a required part of the submission to COAH to request permission to eliminate sites. Please state whether COAH will make this change.

RESPONSE: The deletion of a site as part of a petition before the Council is only a proposal until such time as the plan becomes certified through the substantive certification process. Plans that do not fulfill the third round obligation can not be certified.

N.J.A.C. 5:97-6.5(c)

COMMENT: The rule proposal requires COAH to consider market conditions in assessing the viability of sites that have been zoned, but have not yet developed for affordable housing. COAH should provide criteria for its review of market conditions. If COAH finds that market conditions have changed, it should mandate ordinance changes that reflect market conditions.

RESPONSE: While changes in market conditions may represent a reasonable explanation as to why development has been delayed, market conditions typically correct over time and development will ultimately occur. The criteria to evaluate such conditions are variable and must therefore be established within the context of the market at the time of evaluation. The Council believes that zoning is an appropriate tool to foster the production of affordable housing by providing realistic opportunities for market-rate developers to include affordable housing in development proposals. Using this tool as an artificial influence on general market conditions is outside the scope of the Council's range of authority.

N.J.A.C. 5:97-6.6

COMMENT: The redevelopment regulation is inaccurate. Many of the RCA receiving communities used these funds to redevelop and gentrify their communities by destroying a large part of the market-rate affordable housing. The proposed new redevelopment provisions will foster the destruction of low- and moderate-income and minority neighborhoods, causing displacement of existing low- and moderate-income minority families from their communities, and perpetuating and intensifying economic, racial and ethnic segregation within the State. A lot of people live in these lower cost units. They may not be in the best condition, but they're being taken in redevelopment and replaced with unaffordable housing. COAH should mandate in any redevelopment project that all market-rate affordable housing units that are destroyed be replaced one for one. On top of that, the COAH ratio should be applied. Many people have lived in affordable communities in the cities because the suburbs have neglected their affordable housing obligation. As they gentrify, people are being pushed out, but to where? Suburbs haven't built their fair share of affordable housing.

Redevelopment is clearly the way of the future and redevelopment regulation needs to be much stronger to meet these concerns. People that live in the community should benefit from redevelopment. They shouldn't be pushed out in favor of other people. There should also be a requirement in any redevelopment project that units must be affirmatively marketed only after the people that lived in the community, and have been displaced, are offered their first choice.

RESPONSE: The Council thanks the commenter and will clarify N.J.A.C. 5:97-6.6(f)2 in a future rule amendment as follows: "An affirmative marketing ordinance in accordance with UHAC and insuring that If a low- or moderate-income household has been displaced by the creation of restricted units pursuant to the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.), then such households shall have a preference over other applicants for referral to the newly created restricted units, provided the household meets all certification requirements set forth in UHAC at N.J.A.C. 5:80-26.6." The commenter is directed to changes currently proposed to the existing Local Housing and Redevelopment Law at N.J.S.A. 40A:12A-1 et seq. These changes are being considered as part of the New Jersey Assembly's proposed Bill A-500. The Bill calls for an "affordable replacement housing unit for each affordable housing unit that is identified as to be removed as a result of implementation of the redevelopment plan." Households occupying these demolished units, if these units were also included "under any State or Federal housing subsidy program, or pursuant to the [New Jersey] Fair Housing Act. . . shall have first priority for those replacement units. . ." Households not occupying COAH credited affordable housing units would be eligible to apply for occupancy along with the general public in the affirmatively marketed notice of vacancies.

COMMENT: Areas declared in need of redevelopment are areas that already require a variety of incentives to promote development. Adding COAH costs to development in these areas could make them unfeasible, even with density bonuses. Will there be any special considerations for areas declared in need of redevelopment with respect to COAH obligations?

RESPONSE: The Council has established redevelopment as an optional mechanism for municipalities to meet their affordable housing obligations. Municipalities may select from a variety of other mechanisms permitted by COAH's rules to address their affordable housing obligations. The Council is also considering an amendment in the near future to provide incentives for rental housing and redevelopment in qualifying areas. Lastly, COAH will propose amendments to its zoning rules in the near future to further address the issue of compensatory benefits for developers in exchange for the provision of affordable housing.

COMMENT: Redevelopment is not listed in N.J.A.C. 5:97-3.2(a)4 as one of the mechanisms that has to be finalized and documented at the time of the petition, and it would be appropriate for a municipality to provide for future redevelopment as a way of phasing in affordable housing. Future redevelopment might well require the use of eminent domain if a sale cannot be negotiated and the use of eminent domain is otherwise justified. This section should be rewritten to require that municipalities proposing redevelopment shall have one year from the program "activation date" in the municipality's Housing Element and Fair Share Plan to demonstrate site control. In this way, the municipality will have an opportunity to obtain COAH's approval of the suitability of the site through the certification or plan amendment and recertification process before it expends public funds in pursuit of its acquisition.

RESPONSE: COAH agrees with the commenter that redevelopment is an affordable housing mechanism that can be phased pursuant to N.J.A.C. 5:97-3.2(a)4. The rule will be amended in the near future to address the issue of site control.

COMMENT: Council should define "site control" as used in N.J.A.C. 5:97-6.6(b)2.

RESPONSE: The Council will include the definition in a future rule amendment.

COMMENT: Is COAH aware that there are municipalities that negotiated and executed Redevelopment Agreements and Plans based on the prior third round rules that included one affordable unit for every eight market rate units and one affordable unit for every 16 new jobs? In addition, demolition credit was subtracted based on the prior

third round rules. COAH should honor those Redevelopment Plans and Agreements and grandfather in those affected redevelopment sites so that they do not fall under the new proposed ratios.

RESPONSE: COAH agrees with the commenter and will propose a rule amendment in the near future that would provide a bonus credit for affordable housing units included in redevelopment agreements executed between December 20, 2004 and June 2, 2008 provided the affordable units were included in a previous third round petition to COAH.

COMMENT: The rules are not consistent with respect to the subject of redevelopment. If a municipality wishes to identify potential affordable housing sites to be acquired and developed through the redevelopment process, N.J.A.C. 5:97-6.6(b)2 requires that the municipality have control over the site(s) in question. When preparing a vacant land analysis, however, N.J.A.C. 5:97-5.2(c)6 requires inclusion of "any parcel ripe for redevelopment" as a potential affordable housing site.

RESPONSE: The Council does not view these regulations as contradictory. COAH's intent, in asking for site control in redevelopment areas, was to ensure the existence of a realistic opportunity for the creation of affordable housing. The specific requirement for site control at the time of petition will be removed from COAH's regulations and alternative language to demonstrate realistic opportunity substituted in an upcoming amendment. The requirement that municipalities include parcels "ripe for development" in any vacant land inventory provides COAH with a complete understanding of the remaining vacant land within the municipality and any opportunities to provide affordable housing as part of redevelopment. In requesting a vacant land adjustment a municipality is seeking an adjustment of its current affordable housing obligation and as such must clearly demonstrate that its future development, and the future creation of affordable housing units, is constrained due to the lack of available, developable, vacant land. At the same time, the Council considers whether there are any opportunities to address the "unmet need" through overlay zoning or redevelopment opportunities. Such opportunities need not meet the same realistic opportunity standard as sites addressing the RDP. When COAH grants a vacant land adjustment, the realistic development potential (RDP) of each suitable vacant parcel is calculated. This RDP quantifies the remaining vacant land, but COAH does not direct how a municipality shall address that affordable housing obligation.

COMMENT: Redevelopment is a timely process which relies on many factors including site control, visioning, planning studies, resolutions from the governing body and planning board and a redevelopment agreement. A municipality should be allowed flexibility in submitting and implementing redevelopment projects, rather than being required to submit all information at the time of petition.

RESPONSE: COAH's proposed regulations do provide municipalities with flexibility in regard to the redevelopment process. A municipal plan may propose a redevelopment project in the near future and supply all required supporting documents at the time of petition. In the alternative, a municipality may propose that a redevelopment project will occur according to a COAH approved implementation schedule, pursuant to N.J.A.C. 5:97-3.2(a)4.

COMMENT: COAH should place more emphasis on the satisfaction of affordable housing obligations through the redevelopment process as opposed to through the consumption of vacant land. Municipalities should be required to priortize affordable housing development within redevelopment and infill, over zoning on greenfields. Fewer regulatory obstacles in redevelopment areas hasten the development process while keeping compliance costs down.

RESPONSE: The Council does encourage municipalities to address affordable housing obligations in ways that promote redevelopment and infill; however, COAH believes that municipalities should have the flexibility to select from a variety of affordable housing mechanisms.

COMMENT: Given the limited amount of available land, especially land with sewer service, it will be impossible for New Jersey to meet its affordable housing goals unless the administration works aggressively to bring clarity to the Local Housing and Redevelopment Law in the wake of *Gallenthin Reality v. Paulsboro*, 191 *N.J.* 344 (2007). If New

Jersey's outer suburbs and exurban communities are to create thousands of units of new housing, they cannot be possibly do so without responsible reuse of properties with existing sewer service. Failure to resolve the uncertainty raised by Gallenthin will also halt revitalization of urban areas, undermining the cause of smart growth.

RESPONSE: This comment is outside the scope of the rule proposal.

COMMENT: The caption of this rule should be changed to "Redevelopment in Areas Designated in Need of Redevelopment" to distinguish between sites that redevelop under the Local Redevelopment and Housing Law and those that redevelop under the MLUL.

RESPONSE: COAH agrees with the commenter and will amend the rule in the near future accordingly.

N.J.A.C. 5:97-6.6(a)

COMMENT: This regulation is not helpful to municipalities in the provision of affordable housing in redevelopment projects because the Local Redevelopment and Housing Law provides no guidance except with respect to tax abatements (see N.J.S.A. 40A:12A-4.1).

RESPONSE: COAH's regulations provide guidance as to the provision of affordable housing units within redevelopment areas.

N.J.A.C. 5:97-6.6(b)

COMMENT: The provision requires the municipality to have control of a site if redevelopment is to be used to satisfy a Fair Share obligation. The requirement is too restrictive and unnecessary. Municipalities should not be required to have control of the site until the obligation to provide affordable housing arises. Moreover, COAH has the ability through periodic monitoring to determine if any plan of redevelopment remains realistic. A plan to use eminent domain to acquire redevelopment sites should be honored by COAH. In this regard, a resolution of intent should be required, not actual control.

RESPONSE: COAH agrees with the commenter and will make the following changes in an upcoming amendment: 1) COAH will not require site control at the time of petition, but will provide alternative language to demonstrate a realistic opportunity; and 2) at each monitoring interval, COAH will evaluate whether phased redevelopment projects remain feasible and realistic.

N.J.A.C. 5:97-6.6(b)1

COMMENT: The commenter notes that even though N.J.A.C. 5:97-3.13(a)3, "site has access to water and sewer infrastructure," many municipalities have neither central water nor sewer service. Many rural areas rely entirely on septic systems and wells.

RESPONSE: The Council directs the commenter to N.J.A.C. 5:97-3.13(b)2, which notes that "sites located in Planning Areas 3, 4, 4B, 5 and 5B that are not within a designated center or an existing sewer service area shall have the burden of demonstrating to the Council that the site is consistent with sound planning principles and the goals, policies and objectives of the State Development and Redevelopment Plan." To clarify the intent of N.J.A.C. 5:97-3.13(a)3, a future rule amendment will add definitions of "sewer capacity" and "water capacity," and the provision will be revised to reference them. The definitions recognize on-site facilities, thereby addressing situations in which municipalities must rely on development on septic systems. In addition, the Council will amend the rule to provide for a durational adjustment for the third round. However, the commenter should note that durational adjustments are granted on a site specific basis and only in cases where water and sewer capacity is expected to be made available in the near future.

N.J.A.C. 5:97-6.6(b)1

COMMENT: This rule is unnecessary for inclusionary development projects and only serves to create obstacles to redevelopment. Redevelopment projects already must comply with the zoning contained in the Redevelopment Plan, which considers site suitability in the planning process.

RESPONSE: When the Council considers site suitability documentation, it is to determine whether there exists a realistic opportunity at this site for the creation of affordable housing within the current period of substantive certification.

N.J.A.C. 5:97-6.6(b)2

COMMENT: This provision may be interpreted to discourage municipalities and developers from employing redevelopment to provide affordable housing, something that COAH clearly should not intend. Redevelopment is a recognized compliance mechanism, especially for municipalities with a vacant land adjustment. COAH should amend N.J.A.C. 5:97-6.6(b)2 to state that redevelopment plans that rely on eminent domain can and must be included in a fair share plan if other, more readily feasible mechanisms are not available. Such an approach would ensure that redevelopment is not discouraged if it is the only way to meet an unmet obligation.

RESPONSE: The Council intended only to create a realistic opportunity for the timely creation of affordable housing units during the period of substantive certification. The Council received many comments about the wisdom of excluding the future use of eminent domain and will, in an upcoming amendment, eliminate the requirement for site control at the time of substantive certification in favor of alternative criteria that demonstrate a realistic opportunity.

COMMENT: The commenter believes that COAH's requirement that "[t]he municipality or redeveloper shall have control of the site" is overly restrictive, considering that municipalities are proposing plans for the next 10 years, but under this rule have only seven to 10 months to get control of the site in time for petition. The commenter states that this regulation will discourage future redevelopment plans which would provide affordable housing. In addition, the commenter believes that this regulation would give great power to owners of property, since they can hold up the municipality for a high price for their property, as units will not be counted if a municipality or developer does not control the site by the time of petition. The commenter suggests the site be described in detail in an adopted redevelopment plan, and that the developer be identified. Further, the rule should provide that affordable units achieved through future redevelopment plans are eligible to substitute for units described in the original petition, or to meet additional obligations not anticipated in the original plan. Note also that N.J.A.C. 5:97-6.7(b)2 says "[t]he municipality or developer/sponsor shall have control or the ability to control the site(s)." Why shouldn't this be the wording for N.J.A.C. 5:97-6.6?

RESPONSE: COAH does not believe that N.J.A.C. 5:97-6.6(b)2 discourages redevelopment; however, several commenters have clarified the New Jersey redevelopment experience and COAH will remove the specific language requiring site control from its regulations, and substitute alternative requirements, in a forthcoming rule amendment. COAH has calculated New Jersey's future growth, including redevelopment, as directed by the Court. Therefore, all development, including redevelopment, creates an affordable housing obligation. COAH does not forbid the use of affordable housing units within redevelopment areas toward the satisfaction of a municipality's obligation; rather, the Council is looking for assurances of realistic opportunity during the period of substantive certification. The COAH process and the redevelopment processes are not mutually exclusive and can occur within different timelines. Municipalities have always been free to determine which of COAH's mechanisms best suit the needs of their community. Redevelopment areas do generate an affordable housing obligation for each municipality, but this obligation need not be addressed at this site. It may be addressed elsewhere in the municipality, but municipalities must consider the likelihood that there are other parcels upon which it can actually create the required number of affordable housing units. COAH currently permits a municipality the option to "substitute for units described in the original petitions" within our amendment process. COAH makes a distinction between the redevelopment process, completed pursuant to N.J.S.A. 40A:12A-1et seq., and a municipally sponsored development project pursuant to N.J.A.C. 5:97-6.7. The formal redevelopment process is often protracted and by its very nature requires additional subsidies and supports.

In projects created pursuant to N.J.A.C. 5:97-6.7, a municipality has a much greater degree of direct control over the construction process. As such, COAH requires site controls pursuant to N.J.A.C. 5:97-6.7(d)2.

COMMENT: Reliance on potential use of eminent domain in the context of redevelopment is the equivalent of site control. The Fair Housing Act explicitly authorizes municipalities to use eminent domain to develop affordable housing. The rule should be amended to delete the limitation on sites requiring the future use of eminent domain. The rule should also be amended to require an executed redeveloper's agreement, in order to provide more assurance that a realistic opportunity has been created. Such an agreement indicates that a redeveloper is willing to undertake all or part of a redevelopment plan, including any required affordable housing.

RESPONSE: COAH does not concur that the use of eminent domain is equivalent to site control. Rather, eminent domain is an opportunity and a mechanism for attaining site control. Nonetheless, COAH has received numerous comments on its specific requirement for site control, and in response, COAH will amend the requirement for site control, and substitute alternative language to demonstrate realistic opportunity, in an upcoming amendment to its rules. In requesting site control, the Council was attempting to ensure realistic opportunity during the period of substantive certification; however, as a result of many comments, the Council has determined that realistic opportunity can be achieved without the specific requirement for site control at the time of substantive certification. COAH thanks the commenter for the suggestion.

COMMENT: A municipality's commitment to acquire a site after COAH certifies the municipality's plan and thereby determines that the site qualifies as suitable should suffice. COAH should not require a municipality to acquire a site before such time as COAH has made a determination on site suitability.

RESPONSE: The Council will amend its rules to exclude the specific requirement for site control and will propose alternative language to demonstrate realistic opportunity in an upcoming amendment.

COMMENT: Many communities that have designated areas in need or redevelopment and adopted redevelopment plans do not anticipate the need for eminent domain and rely on current property owners to redevelop their properties themselves or enter into market negotiations with redevelopers. This should not preclude redevelopment areas that include affordable housing from being included in municipal fair share plans. COAH should allow the courts to determine the appropriateness of eminent domain in redevelopment areas.

RESPONSE: The Council did not intend to preclude eminent domain from being utilized in the creation of affordable housing units within redevelopment areas; it sought only to create the realistic opportunity for the creation of these units through timely processes that could result in the creation of affordable housing units before the end of the period of substantive certification. The rule will be amended in the near future accordingly.

COMMENT: At what time must it be proven that the municipality or redeveloper has "control of the site"? If "control of the site" is required prior to the time of petition, these provisions could have a drastic and completely unnecessary negative effect on the production of affordable units within redevelopment areas. The requiring "control of the site" prior to the time of petition is unrealistic, unnecessary and would appear to have the very unfortunate effect of eliminating numerous currently planned affordable units throughout the state.

RESPONSE: COAH has received numerous comments on its specific requirement for site control, and in response, COAH will amend the requirement for site control, and substitute alternative language to determine a realistic opportunity in an upcoming amendment to its regulations. In requesting site control, the Council was attempting to ensure realistic opportunity during the period of substantive certification; however, as a result of many comments, the Council has determined that realistic opportunity can be achieved without the specific requirement for site control at the time of substantive certification.

N.J.A.C. 5:97-6.6(b)2 and (e)2

COMMENT: It would appear that these provisions would ban the use of eminent domain if a redevelopment project included affordable units, yet redevelopment projects that consist entirely of market-rate units (that is, without the public benefit of affordable units) could still be accomplished via eminent domain. Please explain how this would advance the public good.

RESPONSE: The Council did not intend to ban the use of eminent domain in addressing affordable housing obligations; rather, it was attempting to create the realistic opportunity for the creation of affordable housing units in a timely fashion and before the end of the period of substantive certification. The rule will be amended in the near future to address the commenter's concerns.

COMMENT: It is critical to understand that control of every last piece of property within a redevelopment area is commonly the very last step in the redevelopment process prior to construction. Prior to control of the site, several very important steps take place during the redevelopment process including: (a) designation of the area as a redevelopment area; (b) preparation and adoption of a redevelopment plan; (c) the solicitation and selection of the designated redeveloper(s); and (d) the preparation and signing of redevelopment agreements. Each of these steps is lengthy and expensive. For that reason, the accomplishment of each step demonstrates a substantial commitment on the part of the municipality in accomplishing the redevelopment project. In the typical case, the entire financial obligation to purchase the site is the legal responsibility of the redeveloper and is imposed as a critical element of the redevelopment agreement. The redeveloper is required to seek the property by negotiation, and if unsuccessful, the municipality will use its condemnation power, on the condition that the redeveloper pays for all the costs of the condemnation process, including the ultimate purchase price. As a result of this procedure, no public funds are used to obtain site control. However, the redevelopment agreement stage is often not achieved for years after an area has been declared in need of redevelopment and a redevelopment plan has been adopted. The proposed rule would impose a new financial burden on municipalities because they would need to incur the acquisition cost of the site. If COAH is concerned about the inclusion of "pie-in-the-sky" redevelopment proposals in Fair Share Plans, the commenter believes it is certainly reasonable that municipalities prove a certain level of commitment. In the commenter's opinion, the preparation and adoption of a redevelopment plan meeting applicable COAH requirements should be sufficient proof of a municipality's commitment and control of the redevelopment area. However, if further commitment and proof of "control" is deemed necessary, certainly the designation of a redeveloper and signing of a redevelopment agreement demonstrates more than enough control and more than enough commitment on the part of the municipality and the developer.

RESPONSE: The Council thanks the commenter for the comment and will, in the near future, amend the proposed rule to eliminate the requirement for site control prior to the grant of substantive certification and substitute the requirement for the submission of an executed redeveloper's agreement prior to the grant of substantive certification or in accordance with the municipality's implementation schedule. It is precisely the length of time a redevelopment project may consume that prompts the Council to require documentation that more substantively creates a realistic opportunity for the creation of affordable housing units within the period of substantive certification. The Council believes the submission of an executed Redeveloper's Agreement can provide this assurance.

COMMENT: The potential uses of eminent domain are a policy issue of such importance that it should be addressed only by the State Legislature, not within the rules of an administrative body of the State. Consideration of amendments to the Local Redevelopment and Housing Law (LRHL) by the State Legislature would be the more appropriate avenue for addressing the potential use of eminent domain rather than through COAH's substantive rules.

RESPONSE: This comment is outside the scope of the rule proposal because it recommends amendments to the Local Redevelopment and Housing Law.

N.J.A.C. 5:97-6.6(b)3

COMMENT: This rule is highly inappropriate and only serves to add a barrier to brownfield redevelopment. The commenter is a national leader in the highly complex field of brownfield redevelopment. The OSG Brownfield

Redevelopment Interagency Team (BRIT) process is entirely irrelevant to an affordable housing regulatory process.

RESPONSE: The Council's rules state that it may refer projects to the BRIT as necessary. The Council recognizes that the commenter is a national leader in the field of redevelopment and does not suggest the BRIT is collectively more knowledgeable; however, as representative of all State agencies that regulate and finance redevelopment projects, the BRIT may be able to expedite the redevelopment process for municipalities. Alternatively, it may be determined that is it not useful or necessary to go through BRIT.

N.J.A.C. 5:97-6.6(b)4

COMMENT: This section states that the redevelopment agreement shall ensure compliance with N.J.A.C. 5:97-6.4(d) through (h). That citation excludes the provision at N.J.A.C. 5:97-6.4(b) which relates to zoning incentives and density bonuses for providing affordable housing. These should also be available in redevelopment zones. The bonuses include one additional market rate unit for every affordable unit required, regulatory relief that results in cost reductions and alternate structure types, etc. These bonuses would be applicable in mixed-use and redevelopment. N.J.A.C. 5:97-6.4(b) also says that zoning in non-residential districts shall provide an increase in permitted floor area with proportional increases in allowable height or impervious coverage to offset any affordable housing requirements. If a site is not physically able to take advantage of such bonuses, the obligation should at least be reduced by the extent to which it cannot be compensated.

RESPONSE: COAH's rules on zoning will be amended in the near future to provide presumptive minimum densities based on Planning Area. The commenter correctly notes that compensatory benefits will be available to redevelopers and the rules will be amended accordingly.

N.J.A.C. 5:97-6.6(d)2 and 3

COMMENT: These rules are unnecessary because they are legal prerequisites to adoption of a redevelopment plan by the governing body that is required in N.J.A.C. 5:97-6.6(d)4.

RESPONSE: The Council agrees that N.J.A.C. 5:97-6.6(d)2 is duplicative and shall delete this requirement in a future rule amendment. N.J.A.C. 5:97-6.6(d)3 provides the Council with assurances that the redevelopment has sought approval from the Office of Smart Growth and COAH believes this is an appropriate requirement. N.J.A.C. 5:97-6.6(b)4 requires that units in redevelopment areas receiving COAH credit meet the Council's standard requirements and will be retained.

N.J.A.C. 5:97-6.6(e)

COMMENT: This rule as written makes it impossible for a municipality with a redevelopment area to achieve substantive certification.

RESPONSE: This regulation describes the minimum documentation required for the crediting of affordable housing units within redevelopment areas. The Council does acknowledge that N.J.A.C. 5:97-6.6(e)2 is unnecessary and has determined to amend this requirement by substituting alternative language to demonstrate realistic opportunity in a forthcoming rule amendment.

N.J.A.C. 5:97-6.6(e)1

COMMENT: This rule is inappropriate because many other steps often occur prior to preparation of the Remedial Action Work Plan. A more appropriate submission requirement would be the executed developers' agreement, which would demonstrate financial commitment to the project, which would include site remediation.

RESPONSE: The Council thanks the commenter and agrees that the specific requirement for the submission of a

Remedial Action Work Plan is unwarranted. The Council will amend the regulation in a future rule proposal to clarify that the Council seeks only proof of a realistic opportunity for the creation of affordable housing units within redevelopment areas and, as such, this assurance can be ascertained at the time of petition and at each subsequent monitoring review event.

N.J.A.C. 5:97-6.6(e)3ii

COMMENT: This rule is onerous because redevelopment plans in Jersey City do not have a schedule but are implemented as market conditions permit. It would be an impossible task to go back over decades of redevelopment plan production and determine the remaining implementation schedule.

RESPONSE: In order to receive COAH credit, a redevelopment project that includes affordable housing must be designed to come to fruition before the end of the current period of substantive certification. Redevelopment projects may develop at their own pace, but in order to receive COAH credit, there must be a reasonable certainty of their creation during the period of certification.

N.J.A.C. 5:97-6.6(e)3iii

COMMENT: This rule is redundant with other sections of the proposed COAH rule.

RESPONSE: This regulation clarifies what documentation is required prior to the grant of substantive certification, or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4, and it is not redundant because this section refers only to the required documentation for affordable housing provided through redevelopment, not other mechanisms.

COMMENT: The rule citations referenced here do not appear to be correct.

RESPONSE: COAH thanks the commenter and will correct the citation at N.J.A.C. 5:97-6.6(e)3iii to read "Compliance with N.J.A.C. 5:97-6.4(i) through (k); and"

N.J.A.C. 5:97-6.6(e)4

COMMENT: This rule is irrelevant to the affordable housing rulemaking process.

RESPONSE: This rule is a reiteration of the requirement of the LRHL at N.J.S.A. 40A:12A-8(i), which requires that a municipality "[a]rrange or contract with a public agency for the relocation, pursuant to the 'Relocation Assistance Law of 1967,' P.L. 1967, c.79 (C.52:31B-1 et seq.) and the 'Relocation Assistance Act,' P.L. 1971, c.362 (C.20:4-1 et seq.), of residents, industry or commerce displaced from a redevelopment area."

N.J.A.C. 5:97-6.7

COMMENT: The Council must be rigorous in its requirements related to site suitability criteria, particularly as to the availability of sanitary, water and sewage service to municipally sponsored affordable housing sites. The Council should also require greater detail in the project cost to assure that a municipally sponsored or 100 percent affordable housing project is financially viable.

RESPONSE: The Council concurs with the commenter concerning the rigorous application of site suitability standards and will clarify the rules in a future amendment relative to the financial feasibility to revert to the language included in the original third round rules, N.J.A.C. 5:94.

COMMENT: Municipal funds for the construction of affordable housing should be made easily available to non-profit groups. Also, the governmental permit process should be streamlined so that the housing can be constructed

in an expedited manner. In fact, exemptions from many of the environmental regulations that greatly hinder the construction of housing should be granted for the construction of affordable housing by non-profit or municipalities. For example, a two-lot subdivision on a lot permitted for such use should not be encumbered by wetlands transition areas, no matter the resource value of the wetlands, especially when the wetlands only exist on a neighboring property.

RESPONSE: All municipalities have the option of making Affordable Housing Trust Fund monies available to non-profits or other parties to assist in the creation of affordable housing. COAH has recently instituted a procedure allowing towns to spend Trust Fund monies on eligible projects prior to receiving substantive certification. In addition, under N.J.A.C. 5:97-8.9(a)8 of the proposed rules, towns must spend the trust fund balance within four years of the Council's approval of the spending plan, or in accordance with an implementation schedule approved by the Council. With regard to the governmental permit process, N.J.A.C. 5:97-10.5(d), developers of affordable housing sites in conformance with a Housing Element and Fair Share Plan may request the Council to assist in expeditious processing or review provided the site meets the site suitability standards pursuant to N.J.A.C. 5:97-3.13. The Council shall strive for interagency cooperation in assisting the municipality and developer to move the affordable housing development forward expeditiously.

COMMENT: The Council should clarify who is required to bond for projects that are 100 percent affordable, but are not municipally sponsored. The developer of a 100 percent affordable housing site should not be required to bond, much the same as an inclusionary site developer is not required to bond.

RESPONSE: The Council requires a municipal resolution of intent to bond in the event a project the municipality is "sponsoring" has a funding shortfall. The developer is not required to bond.

N.J.A.C. 5:97-6.7(b) and (d)

COMMENT: A pro forma demonstrating economic feasibility is not just documentation, it is a fundamental substantive standard for such proposals and should be reinstated as a requirement, as should a stable, committed source of funding.

RESPONSE: The commenter has misinterpreted the regulations. The pro forma is a submission requirement for municipally sponsored and 100 percent affordable projects.

N.J.A.C. 5:97-6.7(b)1

COMMENT: N.J.A.C. 5:97-3.13(a)1 requires that a "site has access to water and sewer infrastructure." However, many municipalities have neither central water nor sewer service. Many rural areas rely entirely on on-site septic systems and wells.

RESPONSE: The Council believes that access to water and sewer infrastructure is necessary to demonstrate that 100 percent affordable housing projects are realistic. It may be possible for smaller 100 percent affordable projects to rely on septic systems. The Council will review the feasibility of each project on an individual basis.

N.J.A.C. 5:97-6.7(b)2

COMMENT: The rule states that for municipally sponsored and 100 percent affordable developments, the developer/sponsor or municipality shall have control or the ability to control the site. This advances site acquisition prematurely. This should not be required until the housing plan has been certified by COAH. Instead, a town could demonstrate a willingness to bond for acquisition and include as the first phase of any such project the control or the ability to control the site. Not all municipalities have surplus municipal lands that are appropriate for such a project, but may have the ability to acquire or negotiate for the dedication of such a site within the first two years after certification.

RESPONSE: N.J.A.C. 5:97-3.2(a)4 specifically permits municipalities to provide as part of their Fair Share Plans,

". . .an implementation schedule that sets forth a detailed timetable for units to be provided within the period of substantive certification and a timetable for the submittal of all information and documentation required by N.J.A.C. 5:97-6." Documentation for mechanisms to address the prior round obligation, the rehabilitation share and the growth share obligation up to the first plan review must be submitted at the time of petition. Documentation for a municipally sponsored or 100 percent affordable program, if not proposed to address any of those noted above, will be required according to an implementation schedule but no later than two years prior to the scheduled implementation of that project. This provision allows for phasing of developments and for time for the appropriate parties to acquire the necessary site control.

N.J.A.C. 5:97-6.7(b)3

COMMENT: This regulation should be revised as follows: ". . . construction to begin within two years of substantive certification or entry of final judgment of compliance and repose . . ."

RESPONSE: The Council intends final judgments of compliance and repose to be equivalent to substantive certification and does not believe a change in the wording is necessary.

N.J.A.C. 5:97-6.7(c)

COMMENT: There needs to be clarification regarding projects that involve tax credits and are available to households earning up to 60 percent of moderate income. Will tax credit projects be exempt from the low/moderate split requirements or will the municipality have to treat these units as moderate income units and make up the difference elsewhere? This should be coordinated with the UHAC rules so that municipal responsibilities are clear.

RESPONSE: The comment is in reference to the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, which are promulgated by the N.J. Housing and Mortgage Finance Agency, not COAH. The Council will forward the comments to the Agency, who may address the concerns in a future rule amendment.

N.J.A.C. 5:97-6.7(d)

COMMENT: Given the increasing number of municipalities attempting to fulfill their obligations with developments funded through nine percent tax credits, and the scarcity of those credits, how will COAH evaluate whether projects relying on nine percent tax credits actually present a realistic opportunity for affordable housing?

RESPONSE: The Council will review the proposed funding source documentation to determine if the project presents a realistic opportunity during the proposed time frame. The third round rules specifically provide for phasing of projects and such phasing may be necessary given the competitive nature of tax credit financing. The Council will monitor the progress of all Fair Share Plans and will require the replacement of projects which are not proceeding according to the certified plan. The rule will also be amended in the near future to address the commenter's concerns.

N.J.A.C. 5:97-6.7(d)2

COMMENT: The rule does not include eminent domain specifically as a means to control of the property, even though a municipally sponsored, 100 percent affordable development would surely meet any test of public good. Why not?

RESPONSE: The Council does not prohibit the use of eminent domain as a means to control property for municipally sponsored or 100 percent affordable projects. The Council will evaluate each project proposed in a Fair Share Plan on a case-by-case basis to determine if there is a realistic opportunity that the project will occur as planned.

N.J.A.C. 5:97-6.8

COMMENT: COAH should not provide credit for accessory apartments with 10 year controls on affordability. If the program is not viable with 30-year controls, it should be eliminated. Rather than recognize that the affordable housing program does not create a realistic opportunity, COAH has attempted to breathe life in the program by allowing credit for accessory apartments with only 10-year controls on affordability. Thus, even if successful, any addition to the affordable housing stock is extremely temporary.

RESPONSE: The Council has received comments from many municipalities that the 30-year controls decrease the likelihood that individual homeowners will choose to participate in this program. The Council sees the accessory apartment program as an important mechanism for making affordable rental housing available. As such, the rules revert to the 10-year controls which existed under prior rounds. The program as currently proposed allows municipalities the option of implementing a program which is best suited to local conditions.

COMMENT: The regulations state that no accessory apartment ordinance can limit number of bedrooms. This provision seems like an unintended carryover from other sections of the rules where it would make more sense. Preventing a municipality from limiting bedrooms in accessory apartments to one or two bedrooms and thus allowing an applicant to "choose" to build a three- or four-bedroom "apartment" seems like a bad idea.

RESPONSE: The Council is sensitive to the fact that accessory apartments are attached to if not part of an individual's primary residence. The lot size or existing structure may also limit the size of the apartment and thus the number of bedrooms. For these reasons, there are neither minimum nor maximum requirements on the number of bedrooms. The rules simply state that municipalities may not restrict the program solely to one-bedroom units, for instance.

COMMENT: Allowing for a staggered submittal schedule for municipalities is a positive step in that it will create a more efficient and realistic review schedule for COAH staff.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The proposed changes to the accessory apartment regulations are a substantial improvement over the previously proposed rules, which would have for all intents eliminated the program as a viable option for providing affordable housing.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: Paragraph (b)2 should be revised so that if no municipal subsidy is required to create the accessory apartment through actual construction costs or to provide compensation for reduced rental rate, then no such minimum subsidy should be required. As a condition of substantive certification, COAH requires that municipalities commit to provide funds or bond for any shortfall in funding necessary to implement the fair share plan. Using the same approach, no minimum subsidy requirement makes sense when the town must guarantee COAH that it will pay actual costs. The more appropriate approach is to identify a "suggested" amount as a guideline. Council should also permit the economic benefit or incentives for the accessory apartment program to be through additional mechanisms other than only via a $ 20,000 or $ 25,000 subsidy for low/mod units. Examples of other mechanisms are a form of zoning relief (that is, previously illegally created apartments, accessory use permits, setbacks, etc. . .), tax abatements, or fee waivers.

RESPONSE: The Council has experimented with accessory apartments since it began reviewing housing elements. It has found little or no interest in accessory apartments when there is no subsidy available to augment their creation. A municipality may, however, seek a waiver from the Council on the amount if the municipality can demonstrate that the units require less subsidy to create them.

COMMENT: The rules should state that the municipality must have someone (on staff or consultant) with a proven record or capacity to complete the implementation of this assignment in order to enhance the likelihood of completion.

RESPONSE: The rules call for the adoption of an accessory apartment ordinance consistent with the Council's regulations at N.J.A.C. 5:97-6.8. The third round rules also require each municipality to appoint a municipal housing liaison who will receive regular training from COAH. In addition, the Council must approve all administrative agents responsible for overseeing affordable units in each program or project.

COMMENT: Under the proposed rules, accessory apartments are subject to the same affirmative marketing requirements as other units. For an accessory apartment program to be successful, the owner of the unit needs to have significantly more discretion to select the tenant to occupy that unit. So long as that tenant is an income qualified individual or family, the objective of providing an affordable housing unit for a low- or moderate-income person or family has been achieved. To require the owner to go through an affirmative marketing program and perhaps rent the unit in his own home to a person or family with whom the owner may be incompatible, will result in the demise of the use of this mechanism. If COAH is going to keep this mechanism in place, it must allow its implementation in a pragmatic and realistic manner.

RESPONSE: Affirmative marketing is a basic requirement for all COAH units that are intended to address a municipality's growth share obligation. The Supreme Court, in its *Warren* decision, has generally invalidated residential preference for units that meet a regional need and provided very specific guidelines on any future residential preference. Therefore, the Council has determined that such a reservation of accessory apartments is inconsistent with the direction provided by the Supreme Court. Homeowners with accessory apartments may, however, choose from a list of potential, eligible households.

COMMENT: Clarification is needed on infrastructure requirements for accessory apartments. The regulations state, "there shall be adequate water and sewer infrastructure. . ." Does this mean that accessory apartments can only be serviced by public sanitary sewer? Accessory apartments should be able to be serviced by on site septic systems subject to the necessary approvals, as they can provide affordable housing development options in rural areas.

RESPONSE: Accessory apartments serviced by on-site systems are addressed in N.J.A.C. 5:97-6.8(d)6, which states ". . .where the proposed location of an accessory apartment is served by individual well and/or septic system, the municipality must show that the well and/or septic system meet the appropriate NJDEP standards and have sufficient capacity for the additional unit." COAH included this provision in the proposed regulations to make it clear that accessory apartments utilizing on-site systems are permissible.

COMMENT: The revised rule allowing accessory apartments with 10-year affordability controls to be used as a component of the municipal Fair Share Plan is a welcomed revision from the initially adopted Third Round rules, and one that was requested by our municipality. Addressing this request in the rule revision is very much appreciated since the municipality has a number of units that may qualify under this provision in the rule and accessory apartments will likely be a mechanism included in its re-petition for substantive certification.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-6.8, 6.9 and 6.14

COMMENT: COAH must place strict limits on the accessory apartment program, the market to affordable program and the extension of controls program. None of these programs act in any meaningful way to expand the housing stock. Some diminish the supply of affordable housing for the general public by allowing the municipality to restrict relatively affordable housing to low and moderate income households.

RESPONSE: Accessory apartment programs represent a viable way to produce affordable housing in some communities, especially rural areas not served by public water and sewer. The conversion of a vacant market rate unit to an affordable unit does, in effect, create a new affordable unit that would otherwise not exist. The extension of expiring controls program maintains as affordable, units which might otherwise be lost. The Council believes that these three

programs provide legitimate means of fulfilling a municipality's affordable housing obligation. The Council does, however, place a 10-unit or 10 percent of affordable housing obligation maximum on accessory apartments and is extending this maximum to the market-to-affordable program as well.

N.J.A.C. 5:97-6.9

COMMENT: The Council should permit the economic benefit or incentives for this program to be through mechanisms other than a $ 25,000 or $ 30,000 subsidy from the municipality for low/moderate units. Examples of other mechanisms are a form of zoning relief (that is, previously illegally created apartments, accessory use permits, setbacks, etc. . .), tax abatements, or fee waivers.

RESPONSE: It has been the Council's experience that there is little or no interest in accessory apartments when there is no subsidy available to augment their creation. A municipality may, however, seek a waiver from the Council on the amount if the municipality can demonstrate that the units require less subsidy to create them.

COMMENT: COAH should eliminate the market to affordable program because the market units purchased are precisely the units that COAH believes will filter to low and moderate income units without any municipal intervention.

RESPONSE: The transactions data was screened to only count property transfers between private individuals under arms-length conditions. Transfers involving purchases by public sector entities were dropped from the sample. Moreover, the Council believes that the market to affordable program is an important mechanism that provides family housing opportunities.

COMMENT: Since this program relies on the free market and a willing property owner, the requirement of minimum subsidies should be omitted. Since this is a new program (previous rental program combined with the buy-down program) COAH should further elaborate on the minimum time required for a municipality to demonstrate a successful history. If there is other funding available and the unit complies with UHAC, does it matter how much the town contributes particularly if the municipality is leveraging other funding sources such as grants? Can this be an average? The additional subsidy of $ 25,000 to $ 30,000 per unit should be removed as it further exasperates the already undue burden placed upon taxpayers.

RESPONSE: The market-to-affordable program is an optional program and only one of the mechanisms available to municipalities to address their fair share obligation. The subsidy requirement is carried over from previous programs as it has been the Council's experience that a subsidy of some sort is necessary to make the program feasible. The Council will evaluate the success of a market to affordable program on a case-by-case basis. The municipality may use monies from its Affordable Housing Trust Fund to subsidize the cost of the market-to-affordable units. In this case the funds will have come primarily from either development fees or in lieu of construction payments. The result is that the taxpayer is not bearing the burden of this program.

COMMENT: COAH's rules should be more flexible with regard to the number of units that can be created in the market-to-affordable program to allow more than 10 units to be subsidized, regardless of the municipality's experience. This program can provide a successful method for supplying affordable housing where there are infrastructure limitations. The Fair Share Plan will provide specific information on the total number of units appropriate to this program. If, despite the reasonable expectations of all, the program is not effective, that will become apparent as COAH monitors on a bi-annual basis. At these checkpoints, COAH can require an adjustment if an adjustment is warranted. This proposal is similar to the manner in which COAH has handled accessory apartments in the past. Limiting the market-to-affordable program to 10 for-sale units and 10 rental units needlessly inhibits the creation of affordable housing. The market-to-affordable program represents a good opportunity for municipalities with substantial amounts of money in their trust fund accounts to contract with the owners of rental properties to provide considerably more than 10 units. The rule should be amended to permit more units if the municipality presents a draft developer's agreement with the owner. Approval of more than 10 units could be conditioned upon execution of the developer's agreement, the

transfer of some or all of the funds, and the documentation required by UHAC.

RESPONSE: The Council is revising this rule in the near future such that the maximum number of units is 10 for-sale and 10 rental units or a total of ten percent of the Fair Share Obligation, whichever is greater. A municipality may also propose additional market-to-affordable units once the viability of the program is documented.

COMMENT: The new name for this compliance mechanism is an improvement that will help public understanding.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The buy-down program is a wonderful program because it allows a community to preserve its existing stock of low- and moderate-income housing. It allows the community to reach out to existing low- and moderate-income citizens and keep them within the community by basically allowing them potentially to buy-down a piece of property. COAH's current rules--because of their marketing program--do not give the municipality the mechanism to go to a low- or moderate-income homeowner and offer them the opportunity to buy-down the property, deed restrict the property, but maintain their ability to stay in the property. Economically, it seems to make as much sense to be able to try and curb existing low- and moderate-income housing and the buy-down program is a perfect one if you allow the flexibility to do that.

RESPONSE: Affirmative marketing is a basic requirement for all COAH units that are intended to address a municipality's growth share obligation. The Supreme Court, in its *Warren* decision, has generally invalidated residential preference for units that meet a regional need and provided very specific guidelines on any future residential preference. Therefore, the Council has determined that a reservation of market-to-affordable units for local residents is inconsistent with the direction provided by the Supreme Court. However, the municipality would be eligible for rehabilitation credit under the scenario described by the commenter.

COMMENT: Affordability average calculations for the market-to-affordable program should be modified to exclude contributions to property taxes as this could further exasperate the burden on the remaining taxpayers.

RESPONSE: The approach the commenter is suggesting, that is, to exclude property taxes as a factor in establishing the dollar amount necessary to subsidize a market-to-affordable unit, would result in the unit being priced at a higher figure. The end result is that the subsidy for the income-eligible household would be less and the overall carrying costs would be higher, thereby ultimately making the unit beyond the means of an otherwise qualified household. Any factors which alter the assumptions of affordability will impact the likelihood that a low-or-moderate-income household will be able to stay in that unit.

N.J.A.C. 5:97-6.9(b)1

COMMENT: The rule should be amended to read "at the time they are offered for sale or rental, or in the case of manufactured home land lease communities, sale of the manufactured home and rental of the mobile home lot, eligible units may be new, pre-owned vacant."

RESPONSE: The Council appreciates the commenter's suggestion. The Council will propose amendments in the future to address the unique concerns of the manufactured housing community.

N.J.A.C. 5:97-6.9(b)3

COMMENT: COAH has established the minimum subsidies to purchase market housing and make it affordable to low and moderate income households to be $ 30,000 and $ 25,000 per unit, respectively. Yet, it has established the average subsidy to construct an affordable housing unit to average approximately $ 160,000 Statewide. COAH must justify the wide disparity between what a municipality has to pay to create an affordable unit and what the private sector must pay in the form of in lieu fees.

RESPONSE: N.J.A.C. 5:97-6.9(b)3 provides that the $ 25,000 and $ 30,000 figures are minimum subsidies ". . .with additional subsidy depending on the market prices or rents in the municipality." Local conditions will determine the specific dollar amounts necessary to implement this program.

N.J.A.C. 5:97-6.9(b)4

COMMENT: Can the requirements at N.J.A.C. 5:97-6.9(c)4 be modified to account for areas with high levels of vacancies? In areas of slow growth and high foreclosure rates this is an opportunity for municipalities to provide more affordable housing with what is already in the ground. This provision should be expanded to either include at least 10 percent of the total obligation similar to the accessory apartment provisions, or be expanded even further if the municipality can demonstrate that an existing number of rental units are currently rented at affordable levels without controls and can be brought into a rental program with controls following municipal subsidy. This would not only allow a number of existing rental units be brought into control, but allow communities to create further rental opportunities.

RESPONSE: The Council will revise the rule in a future amendment such that the maximum number of units is 10 for-sale plus 10 rental or a total of 10 percent of the Fair Share Obligation, whichever is greater. A municipality may also propose additional buy- down units once the viability of the program is documented. With regard to the units currently being rented at affordable levels that can be brought into a rental control program, those units would be eligible for credit after the unit was deed-restricted and affirmatively marketed to an income-qualified household, that is, re-rented.

N.J.A.C. 5:97-6.9(c)1

COMMENT: The rules should clarify which ordinance is being referred to.

RESPONSE: The ordinance being referred to is the affordable housing ordinance. The Council does not believe a clarification in the rules is necessary.

N.J.A.C. 5:97-6.9(c)3i

COMMENT: COAH should add an additional provision in the market-to-affordable program to set the maximum sales price at 50 percent of median income for a low income unit if the program is established only for low income households.

RESPONSE: A provision for low-income households has been included to increase program flexibility by allowing units to be either all low-income units or all moderate income units provided overall low/mod split is maintained at the municipal plan level. Moderate-income units, while available to households earning up to 80 percent of the regional median income, may not be priced higher than a level of affordability associated with households earning 70 percent of regional median income. Low-income units, while available to households earning up to 50 percent of regional median income, have been limited in pricing to be affordable to households earning 40 percent of regional median income to retain the maximum affordability average required by UHAC at N.J.A.C. 5:80-26.3(e). Additionally, pricing units slightly less than the maximum allows units to remain affordable as other housing expenses such as property taxes and home owner association fees increase at rates that have historically been disproportionate with increases in regional median income.

N.J.A.C. 5:97-6.9(d)2

COMMENT: What is "sufficient" in this context? Does multiple listing cover rentals as well as for-sale units? Why should a market-to-affordable program be limited by whether there are "sufficient" market-rate units in the municipality?

RESPONSE: Multiple listing service (MLS) information will be required for rental as well as ownership market to affordable (MTA) programs. COAH's purpose in requesting this type of information is to gauge the number of units potentially available for the MTA program. The municipality must submit documentation that includes, but is not limited to, a list of unrestricted, non-affordable properties in selected price ranges within the municipality, that with a subsidy, of not less than $ 25,000, would render the unit(s) eligible for the market to affordable program.

N.J.A.C. 5:97-6.9(d)3

COMMENT: Instead of "typical," which implies an average across all for-sale or rental units in the municipality, this should be "comparable." Any municipality is more likely to use this means to subsidize the less expensive units, and by doing so will be able to subsidize more of them; and why should they be subsidized up to a "typical" level, which would simply benefit the landlord or seller? They should be subsidized up to the level normal for that rental project.

RESPONSE: The Council believes the words typical and comparable will produce similar results. The intent of the market to affordable program is to bring otherwise unaffordable units within the means of income-eligible households. Subsidies will make that affordability possible. The word "typical" refers to the unit, not to the amount necessary to subsidize that unit. The subsidy does not provide additional benefit to the landlord or seller because that party will receive only the market-rate price for that unit.

N.J.A.C. 5:97-6.10

COMMENT: Credits should be received for each bed instead of bedroom created in supportive, special needs and or group homes, residential health care facilities and shared living housing living facilities, as the facility licenses, as issued by the State, are based upon the number of beds, not the number of bedrooms.

RESPONSE: The group quarters projection developed by the Council in its methodology assumed two beds per bedroom; therefore, the unit of credit does account for number of beds and the unit of credit is appropriately the bedroom.

COMMENT: A municipality should be able to receive credit for units even if the municipality or developer/sponsor does not control or have the ability to control the site(s), as stated in N.J.A.C. 5:97-6.10(b). In accordance with N.J.S.A. 40:55D-66.1, community residences shall be a permitted use in all residential districts of a municipality, and the requirements therefore shall be the same as for single family dwelling units located within such districts. Therefore, a municipality cannot control the placement of community residences but it should be able to receive credit for group homes for people with developmental disabilities and/or mental illness, as licensed and/or regulated by the N.J. Department of Human Services, if all of the conditions (with the exception of site control) are met as stated in N.J.A.C. 5:97-6.10 for the entire time period.

RESPONSE: COAH is familiar with the provisions in the in the Municipal Land Use Law allowing group homes in all residential districts. The requirement concerning control of the site relates to guarantees that the site has a realistic potential for development as a group home. The requirement relates to ownership or proof of a long-term lease on the site, not that the town could restrict the unit or site from being used as a group home.

COMMENT: The credits available to municipalities under this section should be capped at the projected need for 8,812 bedrooms (see Appendix A, 40 N.J.R. 274), otherwise the constitutional housing obligation will be diluted by granted credits for units not projected to be needed. Other commenters suggest a 10 percent cap on use of this mechanism.

RESPONSE: The Council does not believe it appropriate or necessary to place a cap on the number of special needs housing each municipality may accommodate. The projected group quarters need is just that, a projection, and the

Council acted reasonably in including these projections in the need. The commenter should note that the Council has established a 50 percent family housing requirement to ensure that family housing needs are being addressed.

COMMENT: Why dilute the constitutional housing obligation by granting three credits for a three-bedroom group home, yet only one credit for a three-bedroom family affordable unit?

RESPONSE: A group home qualifies as group quarters according to the Census and, therefore, the appropriate unit of credit, and corresponding bonuses, is the bedroom.

COMMENT: The change in terms to "supportive and special needs housing" is a welcome change in keeping with national and State housing policy.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: There is some confusion regarding the terms used throughout this section. The section regulates "supportive and special needs housing," including "residential health care facilities," "permanent supportive housing," "supportive shared living housing" and "group homes." The term "permanent supportive housing" is new to the rules and is inadequately differentiated from other types of supportive and special needs housing in the definitions. The definition of this term should be enhanced and distinguished from the other terms used, so that the basis for crediting is clearer.

RESPONSE: The regulations will be amended in the near future to address the commenter's concerns.

COMMENT: Chapter 93 included a broader spectrum of alternative living arrangement, congregate living, special needs and supportive housing, boarding houses, temporary homeless shelters, etc., than this proposed rule provides for. The regulation should be broadened for the most inclusive interpretation of affordable housing possible. The broadest and most inclusive pallet of housing opportunities will not only foster better municipal compliance with regulations, it will provide better housing opportunities for all of New Jersey citizens.

RESPONSE: The proposed rules provide for various alternative living arrangement options such as group homes, residential health care facilities, shared supportive housing and other forms of permanent supportive and special needs housing. The Council eliminated boarding houses when it promulgated the original third round rules. In addressing those living in group quarters, the methodology employed by the Council eliminated most individuals living in institutions, group quarters, and boarders/lodgers from potential low- and moderate-income housing demand.

COMMENT: COAH should keep transitional affordable housing as an eligible affordable housing component of special needs and supportive housing in the third round. Permanent transitional affordable housing that provides individuals and households with housing for up to one or two years is a needed part of the continuum of affordable housing, especially in urban and developed suburban areas. Services typically are offered with this type of housing to help individuals and households with job training, GED classes, and other life skill training. COAH's own definition of "individuals with special needs" acknowledges this continuum of needed housing by including "individuals and families who are homeless." Many individuals are not able to jump right into an affordable unit, instead needing a transitional affordable unit for months or a few years. It is important to remember, however, that the providers of transitional affordable housing operate this housing on a permanent basis for a minimum 30 years and thus should be eligible for COAH third round affordable housing credit.

RESPONSE: The State of New Jersey over the past several years has been moving toward a housing first model to address homeless and special needs housing. Housing first in this context would be defined as limiting an individual or family's length of shelter or street stay and rapidly housing them into permanent affordable or supportive housing. In this context, the N.J. Special Needs Housing Trust Fund (administered through the NJHMFA) does not fund transitional housing and the policy of the Department of Human Services is to stress permanent supportive housing opportunities. Additionally, research documents that permanent supportive housing works, is less costly not only monetarily but also

to a person's quality of life. If the State of New Jersey continues to put its limited resources into transitional and/or shelters, the State will not address and develop the true permanent affordable housing needs of the homeless. The end result will be the continued cycling of people through the homeless system. In a county that has a large number of transitional housing programs and very few permanent supportive housing options, people graduate from transitional housing and within a year show up back at a shelter or another transitional program. Encouraging the creation of transitional housing at the expense of permanent housing options for the homeless and persons with special needs will only serve to exacerbate a crisis situation because the permanent affordable housing stock will remain stagnant.

COMMENT: COAH should consider a center providing housing for pregnant, unwed, homeless young women. The commenter would think that this qualifies as "supportive and special needs housing." However, N.J.A.C. 5:97-6.10(b)5 states "Units shall serve populations 18 and over." Those who run such a facility would never reject a potential resident because she was under 18. The commenter requests that you make this "primarily 18 and over." Better still, drop this requirement unless COAH has a specific reason for it. Or word it as in N.J.A.C. 5:97-6.15, "Units shall not be restricted to youth under 18 years of age."

RESPONSE: The rule will be amended in the near future to address the commenter's concerns.

COMMENT: The provision for single-person occupancy of the bedrooms in group homes, residential health care facilities and supportive shared living housing should be stricken. In light of the scarcity of funding for this type of housing in the State, to require only one person per bedroom seems unreasonable and impracticable. As long as the unit of crediting is the bedroom and as long as all occupants are low income, it should not matter if two persons share a room or a unit.

RESPONSE: The rule will be amended in the near future to address the commenter's concerns.

COMMENT: This section should be rewritten to refer to persons or households, as most of the people who live in this supportive and special needs housing are individuals who are not members of a household, as defined by the Census Bureau, as they live in places classified as "group quarters."

RESPONSE: The rule will be amended in the near future to distinguish between permanent supportive housing and other forms of special needs housing that are generally occupied by individuals.

COMMENT: In the past, COAH has not provided credit for drug treatment facilities because of the medical care required of such a facility. COAH has provided credit for transitional facilities for the homeless. Does the proposed rule change COAH's crediting philosophy toward drug treatment facilities and transitional facilities for the homeless?

RESPONSE: The Council is no longer providing credit for transitional housing for the homeless.

N.J.A.C. 5:97-6.10(b)4

COMMENT: COAH should clarify that moderate income individuals and households may still be served in supportive and special needs housing even though all bedrooms and/or units shall be affordable (rents set) to low-income households.

RESPONSE: The Council will delete this provision in a future rule amendment. While units or bedrooms in supportive and special needs housing are generally priced to be affordable to low-income households, it is possible that moderate-income households may also reside in these units.

N.J.A.C. 5:97-6.10(b)6

COMMENT: Many municipalities have neither central water nor sewer service. Many rural areas rely entirely on on-site septic systems and wells.

RESPONSE: The Council believes that access to water and sewer infrastructure is necessary to demonstrate that 100 percent affordable housing projects are realistic. It may be possible for smaller 100 percent affordable projects to rely on septic systems. The Council will review the feasibility of each project on an individual basis.

N.J.A.C. 5:97-6.10(c)1

COMMENT: Guidance should be provided as to the form of an affirmative marketing plan that COAH's Executive Director will review and approve for group homes, permanent supportive housing and supportive shared living housing.

RESPONSE: The Council will develop guidelines for affirmative marketing of supportive and special needs housing and will post this on its website after the rules become effective.

N.J.A.C. 5:97-6.10(c)3

COMMENT: COAH should eliminate the requirement that only one person may occupy a bedroom in a group home. The commenter has contacted the Division of Developmental Disabilities of the Department of Human Services and the spokesperson noted that the Department had no plans to limit occupancy of group home bedrooms to one person. COAH's requirement could jeopardize a group home provider's ability to work with municipalities in order to comply with both COAH's proposed new occupancy regulation and the DHS funding requirement tied to more than one per bedroom.

RESPONSE: The provision limiting occupancy to one person per room will be deleted from the rule in a future amendment.

N.J.A.C. 5:97-6.11

COMMENT: The provisions regarding assisted living residences used to satisfy a Fair Share obligation have been made more complex and difficult. There was no reason for COAH to shift away from the language at N.J.A.C. 5:94-4.13 in the 2004 adoption. Of significant impact, COAH is changing the qualifying unit from the bedroom to an apartment. The intent is clearly to deny a portion of assisted living bedrooms as qualifying for credit. COAH should not be looking to restrict assisted living residences as part of compliance plans, and should look to expand alternate living arrangements to be more flexible.

RESPONSE: Assisted living residences continue to be credited by the bedroom as are group homes and supportive shared living arrangements. Permanent supportive housing units will be credited by the unit.

N.J.A.C. 5:97-6.11(b)1

COMMENT: For a two-bedroom unit in an assisted living residence to be entitled to two credits, it should be restricted to two unrelated individuals, not merely "occupied by." Occupation is likely to vary and be difficult to enforce. It is not legal to discriminate between unrelated family units.

RESPONSE: The Council appreciates the commenter's suggestion and will make the appropriate clarification in the rules.

N.J.A.C. 5:97-6.11(b)5

COMMENT: The proposed rule does not specifically address the issues in determining the "affordability" of an independent living unit or assisted living unit within a continuing care retirement community. Certainly, the prohibition in proposed N.J.A.C. 5:97-6.11(b)5 against charging any entrance fees or the like is not an appropriate measure, as there is no reason why a unit could not be deemed "affordable" if a suitable level of "entrance fees" or "capital contribution" is charged. Further, the entrance fee is a financing component of both the housing and the health care services. The

entrance fee is a capital contribution to an independent living unit, as well as to the significant health and social service amenity space that is critical to the care and well being of the frail elderly. Additionally, subscribers to a community have the ability to use the entrance fee proceeds to pay for health and living expenses on a fee for service basis, and, to that extent, such entrance fees are not contributions to capital. Other states with similar affordable housing requirements have analogized a portion of an entrance fee to a prepaid health care account, due to the ability of residents to access these funds to the extent needed to pay for the costs of certain health services.

RESPONSE: The New Jersey Fair Housing Act at N.J.S.A. 52:27D-307b assigns the Council the responsibility of "estimating the present and prospective need for low and moderate income housing at the State and regional level." The Act defines low and moderate income households as those at less than 80 percent of median income based on family size. The Act allows for no access discrimination based on the amount of independent resources an individual has available; therefore, any buy-in that requires assets not generally available to a household below 80 percent of median income is not an affordable housing activity and will not be endorsed as such by the Council.

N.J.A.C. 5:97-6.12 and 6.13

COMMENT: COAH should be clear that no municipality may transfer more than 50 percent of its growth share to another community through regional contribution agreements and the affordable housing partnership program.

RESPONSE: This is the Council's intent and the Council believes it is clear in the rules.

N.J.A.C. 5:97-6.13

COMMENT: What is the difference between an affordable housing partnership program and an RCA? Given that these units count against RCA credit and thus COAH has already acknowledged that they are a type of RCA, how will COAH ensure that this program does not become a way for municipalities to do an end run around the statutorily required review process for RCAs?

RESPONSE: An affordable housing partnership program is an optional mechanism where two or more municipalities cooperate to build low- and moderate-income housing and receive credits proportionately. Partnership programs differ from RCAs in terms of the level of participation of each partner. Partnerships allow for negotiations among the partners on all aspects of the development, not just the monetary concerns. Any units constructed in another municipality pursuant to this type of agreement fall within the maximum number of units permitted to be provided through an RCA. The Council will review all proposals for partnership programs to ensure that there is a realistic opportunity for affordable housing and that the projects carry out the purposes of the Fair Housing Act.

N.J.A.C. 5:97-6.13(b)

COMMENT: When an affordable housing partnership results in the creation of affordable housing in a host municipality, the increased local school enrollment cost burden should be shared on a proportional basis, among each of the municipalities involved, for the duration of the deed restriction. COAH should provide a pilot program to develop partnership program models that can be replicated throughout the State. Consideration should be given to the provision of bonus credits to encourage the creation of affordable units through municipal partnerships.

RESPONSE: An affordable housing partnership is a voluntary agreement that is designed to be flexible to accommodate the specific needs and objectives of the municipalities involved; therefore, the Council expects that the terms of such agreements will be negotiated by the municipalities involved. If the cost burden associated with increased school enrollment is of mutual concern, a proportional responsibility for such costs can be built into the partnership agreement.

N.J.A.C. 5:97-6.14

COMMENT: COAH should not grant another credit for extending controls on affordability unless the municipality must purchase the housing unit to prevent the controls from expiring.

RESPONSE: The Council's decision to permit credit for the extension of expiring controls is intended to promote the preservation of affordable housing units. The Council's decision to allow such credit was upheld in the January 2007 Appellate Division decision, which ruled that ". . .Extending affordability controls on existing housing prevents the loss of much needed affordable housing. Nothing in Mount Laurel II or the FHA prohibits COAH from adopting this technique, and . . . no convincing argument [has been made] that N.J.A.C. 5:94-4.16 is arbitrary or unreasonable." *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing,* 390 *N.J. Super.* 1, 84 (App. Div. 2007) *certif. denied,* 192 *N.J.* 71 (2007).

COMMENT: Expiring control units are not included in the need figures, and thus should not be credited. COAH should either include in the need calculation the total number of units statewide that will have expiring controls prior to 2018, or eliminate this compliance option. This principle should apply to all bonuses and credits. If COAH declines to adopt this approach, please explain why.

RESPONSE: The Council's decision to permit credit for the extension of expiring controls is intended to promote the preservation of affordable housing units. The Council's decision to allow such credit was upheld in the January 2007 Appellate Division decision, which ruled that ". . . Extending affordability controls on existing housing prevents the loss of much needed affordable housing. Nothing in Mount Laurel II or the FHA prohibits COAH from adopting this technique, and . . . no convincing argument [has been made] that N.J.A.C. 5:94-4.16 is arbitrary or unreasonable." *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing,* 390 *N.J. Super.* 1, 84 (App. Div. 2007) *certif. denied,* 192 *N.J.* 71 (2007).

N.J.A.C. 5:97-6.14(a)

COMMENT: In order to be consistent with Federal housing programs, COAH should permit at least partial credit for units regulated by and financed by the Federal government even if affordability controls are not extended for a full 30 years. Under the Federal government's "Mark-up to Market" program, contracts to maintain the affordability of units cannot exceed 15 years. 42 U.S.C. §1437f(d)(2)(A). Yet COAH requires a minimum of 30 years. COAH's policies with respect to the control period for affordable housing should be consistent with those of the Federal government. COAH should be working with the Federal government in maximizing the production of affordable housing, not issuing inconsistent regulations. Under *Mount Laurel II*, 92 *N.J.* at 262, municipalities are entitled to credit when they assist developers in attracting Federal subsidies. Therefore, COAH must offer incentives to municipalities to create affordable housing under the "Mark-up to Market" housing program by permitting municipalities to obtain partial or full credit, thereby increasing the State's stock of affordable housing. Municipalities will not grant approvals for affordable housing that otherwise would be created under "Mark-up to Market" program unless they can credit the units toward their fair share.

RESPONSE: The "Mark-up to Market" program need not be incompatible with COAH requirements. A developer does not have the option of "Mark-up to Market" until the expiration of a HUD Annual Contribution Contract. Placing a COAH Deed Restriction on a multifamily rental project, preferably when the project is first in service, will put restrictions more liberal than those provided through the various HUD project-based programs. Thus, at the time of expiration of the HUD Annual Contribution Contract, the mechanisms will already be in place to increase the rents and obtain private project financing. The commenter already recognizes that HUD 202s, 811s and USDA 515 projects are not eligible for this program, nor are projects leveraged with State or Local funding or LIHTC. However, once the COAH restrictions are in place and the HUD mortgage is released or restructured, these leveraging resources will be available to the project owner to maintain COAH compliance and allow a modified "Mark-up to Market."

N.J.A.C. 5:97-6.14(a)2

COMMENT: The extension of expiring controls program should include those affordable units whose initial affordability controls were set to expire during the third round but were previously extended. Many municipalities were proactive in maintaining their affordable housing stock by extending the affordability controls as part of the unit's sale well before they were set to expire. There are many affordable housing units in our municipality constructed during the first round whose initial 20-year affordability controls were set to expire during the third round. However, in an effort to be proactive and maintain the existing stock of affordable housing, we placed a 30-year deed restriction on these units when sold, prior to the expiration of affordability controls. As the affordability controls on these units have already been extended, COAH should honor these extensions. COAH should grant credit to those units as part of the extension of expiring controls program that meet the following characteristics: 1. The initial affordability controls were set to expire during the third round, 1999 through 2018; 2. The affordability controls were extended for 30 or more years prior to the expiration of the initial first-round affordability controls; and 3. The municipality commits to provide a further deed restriction period that accounts for any gap that exists in totaling 50 years (20 years first round plus 30 years third round) upon a unit's potential sale during the third round.

RESPONSE: Under the situation the commenter describes the units would generally be eligible for credit. N.J.A.C. 5:97-14(a)2 specifically states that units are eligible for credit if, among other conditions, the affordability controls for the unit are scheduled to expire during the 1999-2018 period. If the extension of controls is not in keeping with UHAC, the municipality could submit a waiver demonstrating that the waiver would meet the criteria outlined in N.J.A.C. 5:96-15.

N.J.A.C. 5:97-6.14(a)4

COMMENT: COAH's proposed requirement that a municipality shall fund any required rehabilitation costs associated with extending controls on an existing affordable unit (or building) should be expanded. Presently, the proposed rule lists affordable housing trust funds as the only source a municipality may use. The rule should be expanded to permit a municipality (or other development entity such as a non-profit) to use any source of funds it may solicit and receive such as affordable housing preservation tax credits, DCA balance housing funds, county funds, etc.

RESPONSE: As written, N.J.A.C. 5:97-6.14(a)4 is permissive, not exclusive, in that it states that a municipality may utilize its affordable housing trust fund to purchase the unit and/or complete the necessary repair and rehabilitation work. This does not preclude the municipality from using other funds for the purchase or rehabilitation work. The Council does not feel a clarification in the rule is necessary.

N.J.A.C. 5:97-6.15

COMMENT: Resource-constrained Highlands municipalities should be encouraged to provide affordable housing via mechanisms having the least possible environmental impact that are consistent with the resource protections of the RMP.

RESPONSE: The Council has provided many types of mechanisms to provide affordable housing. Most of the mechanisms provided in N.J.A.C. 5:97-6 do not require new construction and will be sensitive to the environmental constraints of the Highlands.

N.J.A.C. 5:97-7

COMMENT: Since the RCAs are addressing a new construction obligation in the sending municipality, the commenter believes that the use of RCAs should be limited to the creation of new or substantially rehabilitated housing, leading to a net increase of New Jersey's affordable housing stock. RCA payments should then be increased to reflect fully the cost of substantial rehabilitation or new construction.

RESPONSE: To limit the use of RCAs to new construction or reconstruction would be inconsistent with the Act.

The Council believes that it is appropriate to utilize RCA funds toward rehabilitation activities in the receiving municipality as one of the stated purposes of the FHA Act is to revitalize New Jersey's urban centers, one of the targeted beneficiaries of RCA funding. The rehabilitation of the existing housing stock certainly fosters this legislative goal. Additionally, it is the Council's intent to allow the receiving municipality maximum flexibility in determining the best use of the funds consistent with sound, comprehensive regional planning. The RCA minimum transfer amounts were established per the requirements of the Act.

COMMENT: Raising the RCA minimum per unit transfer amount will hurt urban aid municipalities that use RCA funds with other funding sources to provide affordable housing because fewer suburban municipalities will be able to afford to use RCAs as a means of addressing a portion of their affordable housing obligation.

RESPONSE: The Council believes that raising the minimum RCA transfer amounts will benefit urban aid municipalities as the new amounts more closely reflect the cost of providing affordable housing.

COMMENT: RCA funds should be limited to projects that combine affordable and market rate units, with bonuses to developers who contribute to amenities such as parks or recreation facilities.

RESPONSE: The Council appreciates the commenter's concerns. RCA funds may be used for mixed-income projects as long as the affordable units meet COAH and UHAC criteria for credit. The Council does not mandate that the use of RCA funds be limited to this use alone. It is the receiving municipality's responsibility to prepare a project plan that addresses how RCA funds will be used. The Council does not believe it appropriate to grant bonuses for the provision of parks or recreation facilities as this would not promote the production of affordable housing.

COMMENT: The proposed high cost of RCAs, coupled with outright calls for their elimination, ignores the realities of the current market and conflict with smart growth principles that seek to add housing near existing infrastructure and transit.

RESPONSE: The Council appreciates the commenter's concerns, but does not agree that the proposed rules ignore market conditions or smart growth principles. In keeping with the requirements of the Act and the Council's regulations, the Council has increased the RCA minimum contribution to more accurately reflect construction costs of affordable housing in each housing region. In determining the per unit transfer amount, the Act (N.J.S.A. 52:27D-312(f)) states that the Council shall establish guidelines for the duration and amount of contributions and give substantial consideration to the average of: (1) the median amount required to rehabilitate a low and moderate income unit up to code enforcement standards; (2) the average internal subsidization required for a developer to provide a low income housing unit in an inclusionary development; (3) the average internal subsidization required for a developer to provide a moderate income housing unit in an inclusionary development. Following the Council's review of a study conducted concerning the costs associated with rehabilitation and new construction units, in each New Jersey housing region, the Council determined that an increase in the minimum per unit transfer amount is appropriate. Since receiving municipalities are accepting a portion of the sending municipalities' housing obligations, it is important that sufficient funding is provided to support the production of affordable housing.

COMMENT: The increase of RCA payments from $ 35,000 per unit to a range between $ 67,000 and $ 80,000 per unit, depending on COAH region, is a vast improvement over the previous rules. This amount comes closer to compensating the receiving town for the true costs of creating affordable housing.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: Even though the Council has raised the per unit transfer amount for RCAs in each region, it is still not sufficient to adequately fund an affordable housing project.

RESPONSE: The Council has increased the RCA minimum contribution to more accurately reflect construction costs of providing affordable housing. An amount greater than the RCA minimum contribution may be negotiated in a

contract between the sending and receiving municipalities. If the receiving municipality determines that more than the minimum is needed, the receiving municipality is encouraged to negotiate with the sending municipality for an amount necessary to provide the affordable housing units.

COMMENT: Some receiving municipalities are using RCAs to fund projects that are being built to replace older affordable housing projects that were already providing affordable housing. These projects are also receiving large amounts of Federal and State funding in addition to the RCAs. All of these funds should be used to create more affordable housing, not to replace affordable housing that already exists.

RESPONSE: The Council believes that as long as a project meets COAH criteria for credit, the receiving municipality should be permitted to use RCA funds where they most benefit the municipality and persons in need of affordable housing. A receiving municipality must prepare a project plan that details its plans for the use of the RCA funds. The plan is reviewed by HMFA for financial feasibility, the county planning board for sound regional planning and convenient access to employment opportunities and by COAH for compliance with COAH and UHAC rules prior to the RCA being approved.

COMMENT: The commenter does support the utilization of RCAs, but those agreements should be limited to their use within the same COAH housing regions. A Statewide affordable housing trust fund would be unmanageable.

RESPONSE: The rules do limit RCAs between municipalities in the same housing region unless no suitable receiver can be found in the region. The rules do not provide for a Statewide trust fund.

COMMENT: In these times of financial crisis, budget shortfalls, and mounting deficits, it is difficult to understand why the Legislature is introducing legislation to eliminate the RCA as a mechanism for a municipality to address its affordable housing obligation.

RESPONSE: This comment is outside the scope of this rule proposal.

COMMENT: RCAs should be allocated to fund housing to meet the requirements to move developmentally disabled clients into affordable housing.

RESPONSE: RCA funds may be used for any eligible COAH activity that meet COAH criteria for credit, including affordable housing for the developmentally disabled. The Council does not mandate that the funds be used for any specific housing activity in a receiving municipality.

COMMENT: RCAs are and should remain a powerful economic engine for the rehabilitation and production of affordable housing. One way of strengthening the RCA provisions that COAH could consider may be to require expedited execution of RCAs and the transfer of RCA funding within a fixed period of time.

RESPONSE: The FHA stipulates that an RCA may be executed following COAH or court approval of a sending municipality's plan or amendment. The payment scheduled is negotiated between the two municipalities and must conform to a rehabilitation or construction schedule that is relative to the receiver's ability to produce the units, but may not exceed the sending municipality's period of certification.

COMMENT: RCAs continue to be an effective resource in providing affordable housing in a housing region. The only detriment to an RCA is the ability to find a receiving municipality within a housing region willing to accept the responsibility of managing the RCA. The concept of an RCA "bank" at the State level is appealing and would result in an increase in contributions.

RESPONSE: This comment is outside the scope of this rule proposal as the creation of an RCA bank would need to be permitted by the Legislature through an amendment to the Fair Housing Act.

COMMENT: COAH has not met its responsibility under the FHA to establish meaningful standards to assure that each RCA transfer accomplished Mount Laurel goals. Specifically, the commenter recommends that COAH establish and publish standards as to how RCAs, both individually and collectively, might conform to sound, comprehensive planning. Additionally, COAH should establish and publish standards for evaluating whether or not an RCA transfer realistically meets the legal requirement for "access of low and moderate income households to employment opportunities." The county planning board should be required to issue a report explaining its determination of the proposed housing and employment opportunities.

RESPONSE: The FHA sets forth the requirements and standards necessary for approval of RCAs and explains that before approving an RCA, the Council must receive a review by the receiving municipality's county planning board. In that review, the county planning board must consider the master plan and zoning ordinance of the sending and receiving municipalities, its own county master plan, and the State Development and Redevelopment Plan (SDRP) and submit their findings to the Council in written form. The county planning board is required to determine whether the RCA is in accordance with sound regional planning. In addition, the planning board is to submit documentation demonstrating that the RCA will provide affordable housing within convenient access to employment opportunities. Thereafter, the Council shall determine whether the RCA provides a realistic opportunity for the provision of affordable housing within convenient access to employment opportunities. The FHA at N.J.S.A. 52:27D-312c states that after it has been determined that the RCA provides a realistic opportunity for the provision of affordable housing within convenient access to employment opportunities and is consistent with sound comprehensive regional planning, the Council shall approve the regional contribution agreement. If the Council determines that approval of the RCA is appropriate, this decision is based on recommendations that the RCA is consistent with the requirements and standards set forth in the FHA.

COMMENT: Any RCAs approved for the third round prior to legislation being enacted to prohibit RCAs should be exempted. If this is not the case, COAH should grant affordable unit credits for any RCAs lost.

RESPONSE: The commenter refers to a bill pending in the Legislature, A500, which is outside the scope of this rule proposal. If the Legislature invalidated previously approved RCAs as an amendment to the Fair Housing Act, the Council would not have the jurisdiction to grant credits in violation of the Fair Housing Act.

COMMENT: Provide some form of joint unit credit to RCA receiving municipalities. Receiving municipalities are usually the most urban of municipalities with high rehabilitation obligations such that achieving them may not be possible. Affordable units are being created as a result of two municipalities working together. Both contribute to the creation of the units - both should get credit.

RESPONSE: This change would be inconsistent with the Act which states that the sending municipality shall receive credit against its fair share for housing provided through an RCA. The Affordable Housing Partnership program (see N.J.A.C. 5:97-6.13) is an eligible mechanism to address an affordable housing obligation that permits two or more municipalities to share credit for affordable units created.

COMMENT: The commenter believes that COAH should honor RCAs that were negotiated prior to the increase in the transfer amounts.

RESPONSE: The proposed rules, at N.J.A.C. 5:97-7.1(e), allow RCAs to be transferred at less than the proposed per unit minimum transfer amounts if both municipalities adopted resolutions of intent or signed RCA contracts prior to December 17, 2007 and the receiving municipality's project plan is still financially feasible at the lower amounts.

COMMENT: Municipalities should not be able to transfer affordable housing obligations that are a result of additional jobs. Smart-growth principles and DEP priorities to reduce greenhouse gases would support the need to encourage housing closer to jobs.

RESPONSE: The FHA allows municipalities to transfer a maximum of 50 percent of their housing obligation to

another municipality in their housing region. The county planning board is responsible for ensuring that the RCA provides convenient access to employment opportunities in the housing region, thus addressing the commenter's concerns.

COMMENT: To ensure that RCAs remain available to municipalities, COAH should include a rule provision when the rules are adopted in June of 2008 that RCA contractual agreements executed within two years of COAH's adoption of the revised rules (that is, June 2010) shall be a permitted affordable housing mechanism in accordance with the RCA rule provisions as currently proposed in the January 22, 2008 rule proposal.

RESPONSE: The proposed rules permit RCAs to be used as a mechanism to address an affordable housing obligation. The commenter may be referring to pending legislation, which is outside of the scope of the current rule proposal.

COMMENT: The dramatic increase in the per unit transfer amount for RCAs is unreasonable and will result in fewer municipalities being able to use RCAs as a mechanism to address their affordable housing obligation. The cost of RCAs is being increased with no commensurate funding source. No rationale has been provided as to why the cost of an RCA is being increased to such an extent and should be justified. There are concerns that the proposal will create a chilling effect upon a statutorily recognized compliance mechanism which will ultimately harm rural, suburban and urban municipalities alike. Development fees will not be able to pay for the RCAs and payments in lieu of construction are insufficient to pay for municipal construction of units, as the new proposals underestimate construction costs and overstate the average sale price of units. The lack of funding sources to satisfy the compliance mechanisms, the arbitrary increase in the cost of compliance, and the artificial caps placed upon revenue sources will all have the effect of burdening property taxpayers. Such a burden is in violation of the Fair Housing Act, which provides the system shall not be designed to require municipalities to raise or expend municipal revenues to provide for affordable housing. The additional burdens are a disincentive to municipalities to participate in the COAH process. COAH needs to establish guidelines for transfer amounts and not set amounts. The amount transferred should reflect the cost of rehabilitating existing units or constructing new units in the specific municipality. If a receiver can demonstrate that units can be rehabbed or constructed for less than the proposed minimums, the lesser amount should be allowed.

RESPONSE: The Act grants the Council broad discretion to amend its regulations as necessary. In keeping with the requirements of the Act and the Council's regulations, the Council has increased the RCA minimum contribution to more accurately reflect construction costs of affordable housing in each housing region. In determining the per unit transfer amount, the Act (N.J.S.A. 52:27D-312(f)) states that the Council shall establish guidelines for the duration and amount of contributions and give substantial consideration to the average of: (1) the median amount required to rehabilitate a low and moderate income unit up to code enforcement standards; (2) the average internal subsidization required for a developer to provide a low income housing unit in an inclusionary development; (3) the average internal subsidization required for a developer to provide a moderate income housing unit in an inclusionary development. Following the Council's review of a study conducted concerning the costs associated with rehabilitation and new construction of affordable units in each New Jersey housing region, the Council determined that an increase in the minimum per unit transfer amount is appropriate. Since receiving municipalities are accepting a portion of the sending municipalities' housing obligations, it is important that sufficient funding is provided to support the production of affordable housing. RCAs are one optional method through which municipalities may address their affordable housing obligation. There are a number of other mechanisms that do not require municipalities to expend municipal revenues to provide affordable housing.

COMMENT: The RCAs have worked to put the dollars where housing is needed. The larger cities could not sustain their rate of rehabilitation without dollars being sent from rural, suburban and environmentally constrained areas. They have the infrastructure and, in most cases, the jobs to sustain the housing. Eliminating RCAs will put a greater strain on the environment and roads. They have served to assist directing development where it is appropriate and curtailing sprawl.

RESPONSE: The Council appreciates the commenter's support. In the proposed rules, RCAs continue to be an eligible mechanism to address an affordable housing obligation.

COMMENT: The commenter asks that COAH use the power given it by statute to recommend that RCAs be eliminated if they frustrate rather than promote the provision of housing and the promise of Mount Laurel.

RESPONSE: The Council does not believe it is appropriate to take a position on RCAs at this time. The Council is fulfilling its statutory responsibility under the FHA to adopt regulations governing the transfer of Regional Contribution Agreements between sending and receiving municipalities.

COMMENT: It is unfair that urban aid municipalities that now have a growth share obligation cannot claim credit against their own obligation for units rehabilitated or created with RCA funds.

RESPONSE: To allow otherwise would be inconsistent with the FHA which requires that the sending municipality receives credit for units rehabilitated or created with RCA funding.

COMMENT: The proposed minimum RCA transfer amounts are based on a weighted average of the cost of rehabilitating a unit and the net cost of constructing a new unit in each region. What is the justification for using a weighted average?

RESPONSE: The Council reviewed a report that looked at the historic use of RCA funds. Approximately 60 percent of the units transferred were used for rehabilitation and 40 percent for new construction. These percentages were used in determining the minimum RCA transfer amounts for each municipality.

N.J.A.C. 5:97-7.1

COMMENT: The Court did not require COAH to change the formula with reference to Regional Contribution Agreements, and sustained the COAH's use of those agreements.

RESPONSE: The FHA gives the Council broad discretion in amending its rules. After review of current data concerning rehabilitation and new construction costs, the Council determined that an increase in minimum per unit transfer amounts was appropriate. Moreover, the Court required COAH to establish standards for payment in lieu of construction amounts. The Council believed it appropriate to include the new payment in lieu standards as a component of the RCA minimum transfer amounts, as the new standards reflect the cost of constructing a new affordable unit.

N.J.A.C. 5:97-7.1(d)

COMMENT: The rules should further require that RCAs be consistent with the State Development and Redevelopment Plan, the Highlands RMP and other applicable regional and State agency functional plans if they are to be approved by COAH.

RESPONSE: Before approving an RCA, the FHA requires a review by the receiving municipality's county planning board. In that review, the FHA requires the county planning board to review the proposed RCA and to "consider the master plan and zoning ordinance of the sending and receiving municipalities, its own county master plan, and the State Development and Redevelopment Plan" (SDRP) and to submit their findings to the Council in written form. It is the county planning board that is statutorily required to make the determination of sound regional planning and convenient access to employment opportunities. Furthermore, the FHA at N.J.S.A. 52:27D-312c states that after these determinations are made, "the council shall approve the regional contribution agreement." The Council is required to approve all RCAs by resolution, where it confirms the determinations made by the county planning board. If the Council determines that approval of RCA is appropriate, this decision is based on recommendations that the RCA is

consistent with the requirements and standards set forth in the FHA.

COMMENT: The increase in the minimum per unit transfer amount is a welcome change, as it is a new construction obligation of one unit that is being transferred. But what is the rationale for the considerable discrepancy between the proposed in lieu fees and the proposed minimum RCA amounts?

RESPONSE: In determining the minimum per unit transfer amount for an RCA, the FHA, N.J.S.A. 52:27D-312(f) states that the Council shall establish guidelines for the duration and amount of contributions and give substantial consideration to the average of: (1) the median amount required to rehabilitate a low and moderate income unit up to code enforcement standards; (2) the average internal subsidization required for a developer to provide a low income housing unit in an inclusionary development; (3) the average internal subsidization required for a developer to provide a moderate income housing unit in an inclusionary development. The payment in lieu amount, on the other hand, is based solely on the amount of the subsidy required to construct a new affordable unit.

COMMENT: A primary motivation of sending municipalities of sending RCAs is to reduce the costs on municipal services (for example, schools) that any housing creates. The RCA amounts do nothing to measure this cost, despite the Supreme Court's assertion in *Hills* that RCAs should offset such costs. Please state whether COAH will change its regulation to include a provision requiring this cost to be offset by the sending municipality.

RESPONSE: The Council does not consider what the "motivation" of municipalities is entering into RCAs. These agreements are specifically sanctioned under the FHA, which sets forth the standards and requirements for such agreements. The Council followed the requirements of the FHA which states that the minimum RCA transfer should be the average of the cost of rehabilitating a unit and the subsidy required to construct an affordable unit. The payment in lieu amount is based on the amount of the subsidy required to construct an affordable unit. The Council reviewed a report that looked at the historic use of RCA funds. Approximately 60 percent of the units transferred were used for rehabilitation and 40 percent for new construction. These percentages were used in determining the minimum RCA transfer amounts for each municipality.

COMMENT: Two separate minimum per-unit transfer amounts for each region are needed. One amount should be based on rehabilitation costs, the other should be based on new construction costs, rather than the blended average provided for in the proposed rules.

RESPONSE: The Council has increased the RCA minimum contribution to more accurately reflect construction costs of providing affordable housing. The Council believes that using a weighted average of new construction and rehabilitation costs is appropriate and reflects the provisions of the FHA with regard to determining the per unit transfer amount (N.J.S.A. 52:27D-312(f)).

COMMENT: While the moderate increase in RCA amounts is a start towards capturing the true cost of housing in the receiving municipality, it still falls short of what the FHA requires. This is clearly seen by the disparity between RCA amounts and the proposed payment-in-lieu amounts, which are more than double the RCA amounts in every housing region. There is no way this wide disparity can be justified under the Fair Housing Act, which requires that COAH base the RCA amount on the average of three factors: "(1) the median amount required to rehabilitate a low and moderate income unit up to code enforcement standards; (2) the average internal subsidization required for a developer to provide a low income unit in an inclusionary development; (3) the average internal subsidization required for a developer to provide a moderate income unit in an inclusionary development." N.J.S.A. 52:27D-312(f). The payment-in-lieu amounts are the average of (2) and (3), and according to the statute should thus be weighted at twice the rate of the rehabilitation cost - but even if they were weighted equally with rehabilitation cost, it would have to cost less than $ 0 to rehabilitate a unit for this average to make sense. The FHA thus requires RCA amounts to be substantially higher than this rule proposes.

RESPONSE: The Council believes that it properly followed the guidelines set forth in the FHA regarding the

establishment of minimum transfer amounts. The FHA states that the minimum RCA transfer should be the average of the cost of rehabilitating a unit and the subsidy required to construct an affordable unit. The payment in lieu amount is based on the amount of the subsidy required to construct an affordable unit. The Council reviewed a report that looked at the historic use of RCA funds. Approximately 60 percent of the units transferred were used for rehabilitation and 40 percent for new construction. These percentages were used in determining the minimum RCA transfer amounts for each municipality.

N.J.A.C. 5:97-7.1(d) and 6.2(b)2

COMMENT: The Council only requires an average of $ 10,000 for municipal rehabilitation programs. Why are the proposed minimum RCA transfer amounts so high if the funds will be used for rehabilitation in a receiving municipality?

RESPONSE: Units rehabilitated through a municipal indigenous need program are addressing a rehabilitation obligation, while units rehabilitated through an RCA rehabilitation program are addressing a new construction obligation in the sending municipality. The housing stock in the urban areas that receive RCA funds are generally older and require more work than units in suburban areas to raise the units to code standards. The council believes that RCA funds for rehabilitation should be expended for units that are in the most need of repair to prevent those units from being lost to the housing stock.

N.J.A.C. 5:97-7.1(e)

COMMENT: The Council should not allow any RCAs to be transferred below the proposed minimum transfer amounts even if there were agreements between the two municipalities to transfer at a lesser amount.

RESPONSE: The Council believes that it is equitable to allow municipalities that adopted resolutions of intent or signed RCA contracts with specific receiving municipalities to transfer units at a lower amount if both municipalities are still in agreement and the units can be produced at the lower amount.

N.J.A.C. 5:97-7.2(b)

COMMENT: COAH should eliminate the provision that states "Resolutions of intent are not binding upon either municipality and shall not preclude a receiving municipality from negotiating with any other potential sending municipality or renegotiating the per unit transfer amount' of a regional contribution agreement (RCA)." This proposed provision is in direct conflict with the provision immediately above at N.J.A.C. 5:97-7.1 in which COAH honors adopted resolutions of intent which were processed in good faith by both the sending and receiving municipalities in response to COAH's initial third round regulations setting the minimum RCA transfer at $ 35,000 per unit. While the commenter is pleased that COAH will honor third round RCAs that were agreed to by resolutions adopted by both the sending and receiving municipalities, the Township believes it is unfair to permit or even just encourage municipalities to opt out of previously entered RCA agreements or adopted resolutions.

RESPONSE: The Act allows the Council to establish procedures for filing statements of intent by receiving municipalities that wish to enter into regional contribution agreements. N.J.A.C. 5:97-7.2(b) establishes these statements of intent to be in the form of a duly adopted resolution and to be submitted by each municipality proposing to enter into an RCA. The resolution of intent establishes and sets forth the intention of each municipality that would enter into an agreement but does not bind the municipalities as a contract would. The Council proposes to honor existing resolutions of intent and signed agreements that were entered into between December 20, 2004 and December 17, 2007 at an amount not less than $ 35,000 provided that a receiving municipality submits a project plan that is financially feasible pursuant to N.J.A.C. 5:97-7.6 and meets all of COAH criteria for credit. The statements do not conflict with one another as a resolution of intent is not binding on the parties and as the lower amount may be used only if both parties continue to agree. The Council is supporting the voluntary efforts between two municipalities that

have put forth a good faith effort to comply with previous third round regulations in promoting affordable housing.

N.J.A.C. 5:97-7.2(d)

COMMENT: COAH should expand the timeframe to 120 days for a receiving municipality to submit an RCA project plan after the sending municipality petitions as the commenter may have to prepare or expand upon a structural conditions survey; this extra time will permit the commenter sufficient time to prepare the RCA project plan.

RESPONSE: The review of the RCA project plan must coincide with the review of the sending municipality's housing element and fair share plan. The Council believes that 90 days after the sending municipality petitions is sufficient time to prepare and submit a project plan to the Council. This will allow the review of the sender's plan to proceed in a timely manner.

N.J.A.C. 5:97-7.3

COMMENT: The RCA rules state that a receiving municipality shall not receive credit toward its fair share obligation for units provided pursuant to an RCA. This does not seem to be consistent with other terms in the RCA section of the rules.

RESPONSE: Pursuant to the FHA, the sending municipality receives credit for units transferred through an RCA.

N.J.A.C. 5:97-7.3(e)

COMMENT: If a receiving community has received a vacant land adjustment, COAH should prohibit that receiving municipality from taking an RCA until the municipality has met the full unmet need in the municipality. Will COAH make this change?

RESPONSE: The Council does not believe this change is necessary. A municipality that has received a vacant land adjustment may nonetheless benefit from the use of RCAs to rehabilitate or construct new affordable housing.

N.J.A.C. 5:97-7.5(a)

COMMENT: Change the last sentence so it reads, "Rental obligations (including land leased community lot rentals) required by N.J.A.C. 5:94-3.4, or portions thereof, that are transferred to a receiving municipality via an RCA must either create new rental housing units, new manufactured housing land leased lots, or meet the criteria for reconstruction."

RESPONSE: The Council appreciates the commenter's suggestion. As previously mentioned, the Council will consider amendments in the future to address the unique concerns of the manufactured housing community.

N.J.A.C. 5:97-7.5(b)

COMMENT: RCA units funding rehabilitation should only be permitted up to the point at which they equal present need reallocated away from that municipality (as part of the retained reallocated present need from the Second Round). Otherwise, RCAs funding rehabilitation are double counting - simply removing from the receiving municipality the obligation to fulfill its entire rehabilitation share without offsetting any additional need. Please state whether COAH will make this change and, if not, why it will not do so.

RESPONSE: The Council believes it is appropriate to allow receiving municipalities to use RCA funds for rehabilitation up to their rehabilitation share number or in excess of that number if the municipality can demonstrate the need. If a receiving municipality petitions the Council, no credit will be given to the municipality for any units rehabilitated or constructed using RCA funds.

N.J.A.C. 5:97-7.7

COMMENT: COAH needs to define more explicitly what "sound comprehensive regional planning" means to guide county planning boards in their review. What are examples of RCAs consistent with sound comprehensive regional planning, and what are examples of RCAs not consistent with sound comprehensive regional planning?

RESPONSE: The FHA requires the county planning board to review the proposed RCA and states that the county planning board shall consider the master plan and zoning ordinance of the sending and receiving municipalities, its own county master plan, and the State Development and Redevelopment Plan (SDRP) and to submit their findings to the Council in written form. It is the county planning board that is required to make the determination of sound comprehensive regional planning. The FHA at N.J.S.A. 52:27D-312c states that after it has been determined that the RCA provides a realistic opportunity for the provision of affordable housing and is consistent with sound comprehensive regional planning and is within convenient access to employment opportunities, the Council shall approve the regional contribution agreement. All RCAs that have been reviewed by county planning boards, approved by COAH and upheld by the Courts are examples of sound regional planning with convenient access to employment opportunities, as this is a requirement for approval.

N.J.A.C. 5:97-7.7(a)

COMMENT: In N.J.A.C. 5:97-7.7(a), "Relevant" state agencies should be included in this review.

RESPONSE: The FHA requires RCAs to be reviewed by the county planning board of the receiving municipality, the NJ Housing and Mortgage Finance Agency (Agency) and the Council. Therefore, the Council has included the relevant state agencies.

N.J.A.C. 5:97-7.8

COMMENT: COAH needs to define more explicitly what "convenient to employment opportunities" means as it is simply parroting the language from the Fair Housing Act. What are examples of RCAs that are convenient to employment opportunities, and what are examples of RCAs not convenient to employment opportunities?

RESPONSE: The rule requires that the county planning board provide the Council with documentation demonstrating that the RCA provides a realistic opportunity for affordable housing within convenient access to employment opportunities and is consistent with sound comprehensive regional planning. The determination as to whether an RCA provides affordable housing that is convenient to employment opportunities is made on a case by case basis as demonstrated by the specific needs of each municipality and COAH region. However, generally, COAH housing regions bind together economic areas by encompassing most reasonable trips related to journey-to-work. Therefore, being within the COAH housing region will usually be sufficient to demonstrate convenient access to employment opportunities. If it is outside the COAH housing region, there would be a presumption that it does not provide convenient access to employment opportunities and the municipality would have to overcome this presumption.

COMMENT: The proposed rule appears to entirely delegate review of convenience to employment opportunities to the county planning board. Yet the Fair Housing Act explicitly provides that COAH itself should review convenience to employment opportunities, not county planning boards. N.J.S.A. 52:27D-312(c).

RESPONSE: The Council is required by the FHA to determine whether an RCA provides a realistic opportunity for the provision of affordable housing within convenient access to employment opportunities. The regulation requires the submission by the county planning board of additional documentation concerning the RCA's provision of affordable housing within convenient access to employment opportunities for the Council's review and ultimate determination that the RCA is consistent with the requirements of the FHA.

N.J.A.C. 5:97-7.8(d)

COMMENT: This provision should be amended as follows - "An RCA that has been approved by the Council may be executed once the Council grants substantive certification to the sending municipality or the sending municipality's Housing Element and Fair Share Plan has been approved by the Court."

RESPONSE: While the court generally follows COAH rules, it is up to the court to determine when the RCA may be executed.

N.J.A.C. 5:97-8

COMMENT: Environmentally sensitive buildings are also more expensive to construct. The developer's fee will fall more heavily on these sustainable buildings than on buildings designed and constructed under more traditional standards. Since the State is encouraging the construction of more environmentally sensitive buildings, it seems contradictory and counterproductive to propose a developer's fee that would be disproportionally costly for these very kinds of buildings.

RESPONSE: Green buildings, while expensive to construct initially, are more affordable over the life cycle of the building. Additionally, environmentally sustainable buildings receive numerous Federal and State incentives in addition to local incentives such as tax abatements. At the local level, a municipality seeking to encourage green or environmentally sustainable buildings would be prudent to exempt such development types as permitted pursuant to N.J.A.C. 5:97-8.3(e).

COMMENT: The proposed legislation to collect fees Statewide for non-residential growth will have a negative impact on smart growth plan implementation. Paying a fee and not requiring construction of onsite affordable housing will result in single use commercial sprawl development inconsistent with the State Plan. Has a cost analysis been prepared to estimate the impact on the State budget required to administer the collection and distribution of the new State Housing Fund? There will be an administrative cost of at least 30 percent to run the new "State Housing Trust Fund" which will take away money to provide affordable housing. This is a duplication of government services that will be a burden to the citizens of New Jersey.

RESPONSE: This comment refers to legislative Bill A500, which is outside the scope of this proposal.

COMMENT: Thirty percent of the trust fund now must be spent on affordability assistance. The proposed rules continue to require that a third of that, 10 percent, be used to assist very low-income households. To better address the needs of these people with the lowest incomes, the commenter proposes that the new rules double that to 20 percent.

RESPONSE: As written, the rule does not preclude a municipality from dedicating more than one-third of the required minimum 30 percent on affordability assistance to assisting very-low income households. The increase in the allowable development fees that may be collected from a maximum of one percent to up to one and one-half percent for residential and from a maximum of two percent to up to three percent on non-residential development, essentially increases the amount dedicated to affordability assistance overall, as well as that for very-low income households. In addition, at least 30 percent of the development fees collected plus interest must be used towards affordability assistance, which is an increase from the previous regulation that dedicated 30 percent of whatever amount left after new unit production, rehabilitation, RCAs and administrative costs were taken out. The Council believes that the importance of providing affordability assistance, including affordability assistance to very low-income households, must be balanced with the municipalities' need for development fee revenues to fund other components of its fair share plan.

COMMENT: Who is supposed to pay a development fee? If it is going to apply to renovation or reconstruction work, is it a tenant, is it a landlord, or is it the person who pulls the building permit? This is contrary to the Fair Housing

Act, which states that "nothing shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income."

RESPONSE: The development fee is imposed on a developer. Development fee means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3. A developer is defined as any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having enforceable proprietary interest in such land. Development fees also apply to renovation or reconstruction work and is based on the increase in the equalized assess value of the structure. The fee is imposed on the developer as defined above and under N.J.A.C. 5:97-1.4.

COMMENT: This municipality has an extremely small municipal staff. The municipality will need to hire outside contractors to prepare and maintain the requisite inventory of non-residential space and operate the affordability assistance program. This will be expensive, logistically complicated to manage and will undoubtedly raise local taxes.

RESPONSE: The Council received many comments on the issue of the inventory of non-residential space and will amend the rule in the near future to remove the provision in N.J.A.C. 5:97-2.3(a)7 that requires an inventory of all non-residential space. With regard to implementing the affordability assistance program, the rules permit municipalities to spend up to 20 percent of development fees for administrative purposes. The municipality may also wish to consider entering into inter-local, county or region wide partnerships to implement this program.

COMMENT: The commenter requests that there be a fast track process where affordable housing trust monies can be transitioned to non-profit agencies that have developed successful partnerships with municipalities. Development fees are collected to financially support the creation of new affordable homes. Yet, the method for receiving these funds is so difficult and time-consuming that many non-profit agencies are unable to bring their projects to fruition. The proposed changes in the regulations that encourage municipalities to use their funds within the new time frames are applauded. Could there be a process where approved non-profit agencies could demonstrate that they are developing a project for affordable housing that would allow municipalities to release development fees before any work on the project begins? Proof of development could include a pro-forma job description, proof of property control, copies of deed restriction, affirmative marketing strategies and municipal partnership agreements.

RESPONSE: The Council provides an expedited process for municipalities under N.J.A.C. 5:97-8.11 whereby a municipality may request authorization for expenditure of affordable housing trust funds on emergent affordable housing opportunities not included in the municipal Fair Share Plan. In addition, municipalities may now spend trust fund monies prior to receiving substantive certification of their Housing Element and Fair Share Plan. The Council encourages municipalities to work cooperatively with non-profit organizations and is willing to serve as a facilitator to connect municipalities with non-profit organizations seeking to build affordable housing.

COMMENT: If a Statewide development fee is imposed on non-residential development and not imposed at the local level, and if it is at the same rates indicated in COAH's rule proposal above, it would seriously impact the State's ability to attract new commercial development and to be competitive with adjoining states.

RESPONSE: This comment refers to legislative Bill A500, which is outside the scope of this proposal.

COMMENT: If the commenter builds a building and rents it out to a tenant who then fits up the building with a substantial renovation, is the three percent fee due on the finished building when the applicant finishes it or is it due when the tenant finishes?

RESPONSE: The three percent is going to be due when an applicant goes for his or her building permit and/or certificate of occupancy.

COMMENT: Guidance should be given on how and by whom the equalized assessed value (EAV) is calculated.

Some assessors refuse to or are unable to calculate the EAV prior to a Certificate of Occupancy being issued; therefore, the developer's fee should be based on the value listed in the HUD Warranty.

RESPONSE: The adoption of a development fee ordinance is an option available to municipalities participating in the COAH process and is permitted where the standards promulgated by the Council are adhered to. The equalized assessed value (EAV) is generally calculated by the Tax Assessor. The Council carefully deliberated prior to deleting the option of using the value listed in the HUD homeowner's warranty. The Council determined that only a small number of municipalities used this method and that for uniformity and consistency, the regulation be amended to use equalized assessed value, the method used by the vast majority of municipalities.

COMMENT: The new rules permit municipalities to levy developer's fees on higher education projects undertaken by independent institutions while state colleges and universities are exempt from the fees. This approach seems inconsistent because 1) it exempts the higher education construction of independent institutions from the growth share calculation and, therefore a growth share obligation, yet at the same time it allows these same projects to be "taxed" for affordable housing purposes; and 2) it re-introduces inequity between public and independent colleges as public institutions would not be subject to the developer's fees while independent schools could be subject to the levy. The approach also opens the door to differential treatment from municipality to municipality. Most of Princeton University's new educational construction will occur in Princeton Borough and Princeton Township, but some additional educational construction could occur in West Windsor or Plainsboro as well. It is conceivable, and even likely, that similar projects occurring simultaneously in these four communities would be subject to different levels of fees, ranging from zero percent to three percent of construction costs. The commenter urges COAH to remove the inconsistencies of treatment of higher education construction projects by public and independent institutions in the final adoption of the third round rules.

RESPONSE: COAH's proposed rules on development fees are a continuation of the approach in effect since the Supreme Court required COAH to adopt rules governing development fee ordinances in the *Holmdel Builders Association v. Holmdel Township*, 121 *N.J.* 550 (1990) case. In addition, the Supreme Court in *Rutgers v. Piluso*, 60 *N.J.* 142 (1972) upheld the immunity of public institutions from local zoning. Pursuant to the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-8(c), a municipality may by ordinance exempt, according to uniform standards, charitable, philanthropic, fraternal and religious nonprofit organizations holding a tax exempt status under the Federal Internal Revenue Code of 1954 (26 U.S.C. §§501(c) or (d)) from the payment of any fee charged under this act. In addition, under the provisions of N.J.A.C. 5:97-8.3(e), municipalities have the option of exempting specific types of developments, such as those of not-for-profit entities, including independent institutions of higher education, from the imposition of development fees. In fact, the rule proposal specifically references educational institutions as entities that municipalities may exempt from development fees. The commenter should note that structures classified as Use Group B, A3 academic buildings, and graduate student housing constructed by institutions of higher education have been exempted from payments in lieu of construction requirements and the Legislature recently proposed Bill A500 which exempts educational institutions from the imposition of development fees. If the bill is adopted in this form, the Council would revise its rules accordingly.

COMMENT: The commenter strongly supports a housing policy that encompasses New Jerseyans at all income levels. With this in mind, it is necessary that COAH be cognizant of the increased costs associated with additional regulations that may affect housing in New Jersey. Development fees or impact fees, while providing the funds necessary to build affordable housing, increase the costs of housing for middle class homeowners. Any rules adopted by COAH should ensure the affordability of housing for all residents of our state and should streamline the regulations associated with the building of housing, which in turn will allow for more affordable housing for all the citizens of New Jersey.

RESPONSE: The Council has the authority pursuant to the *Holmdel* decision to regulate development fees. The Council carefully considered the impact of increasing the development fees. The development fee percentages were last increased in 2004. In consideration of the substantial increase in municipal affordable housing obligations resulting

from the 2007 Appellate Division decision, the Council felt it was appropriate to increase the fees to provide additional resources to municipalities to meet increased affordable housing obligations. To ensure that development fees are spent more expeditiously, the Council has established a new deadline of four years from the Council's approval of the spending plan for municipalities to spend any existing trust fund balance. The Council believes that the proposed regulations sufficiently streamline the regulations with regard to imposition, collection, and expenditure of development fees.

COMMENT: From 2004 to present, municipalities collected the maximum fees through either developers fees or a growth share ordinance, but the amounts do not equal what will now be needed. The commenter realizes that municipalities were advised in the past few years to continue to work toward their housing obligation, but the market had made that activity less realistic. The shortfall between the cost of an affordable housing unit now, either as an RCA or as a unit built on site, has increased so much that any funds previously collected will not go as far as had been expected. It seems improbable that municipalities will have enough funds to meet the new affordable housing obligation. Most municipalities will need to make up for the lack of being proactive in the affordable housing obligations for the past few years and will need to increase density beyond the 20 percent, or one in five affordable housing obligation.

RESPONSE: The Council does not mandate the expenditure of municipal revenues to provide low and moderate income housing. Under the Council's proposed rules, a municipality can choose from a variety of mechanisms in addressing its affordable housing obligation, some of which require little or no municipal subsidy. Inclusionary zoning, for example, would require the developer to provide the affordable housing on-site, or as a possible alternative, to provide a payment in lieu of construction. Neither scenario would require a municipal subsidy. Other mechanisms, such as an accessory apartment program and a market to affordable program require minimum subsidies of $ 20,000 to $ 25,000 and $ 25,000 to $ 30,000, respectively, which are significantly less than the required payment-in-lieu amounts. However, the Council recognizes the need for additional funding for affordable housing to meet third round obligations and therefore has increased the maximum permitted residential development fee from one percent to 1 1/2 percent of equalized assessed value (EAV) and the maximum permitted non-residential development fee from two percent to three percent of EAV. The Council also encourages municipalities to partner with developers in taking advantage of other federal and state governmental funding, such as the Balanced Housing Program and the Low Income Tax Credit Program.

N.J.A.C. 5:97-8.1

COMMENT: The commenter supports the creation of a State Affordable Housing Trust Fund into which broad-based fees and revenues are placed for the purpose of creating affordable and workforce housing. Established local trust funds that contain substantial monies collected from developers should be subject to careful monitoring and strict enforcement guidelines to ensure that affordable housing gets built. If not, the money is turned over to the State fund for the immediate creation of housing. Approximately $ 150 million is sitting idle in municipal trust funds without being put to work to produce affordable housing.

RESPONSE: The comment regarding a State Affordable Housing Trust fund is outside the scope of the rule proposal. With regard to the timely expenditure of affordable housing trust fund monies, the rule requires trust fund balances to be spent within four years of the Council's approval of a spending plan.

N.J.A.C. 5:97-8.1(b)

COMMENT: The rule proposal allows fees collected as a result of negotiated agreements to be deposited in affordable housing trust funds. The Appellate Court was clear that negotiated fees are invalid. To what negotiated fees does the rule refer?

RESPONSE: The regulation reference to negotiated agreements concerns development agreements and does not

refer to any negotiations regarding compensatory benefits, in lieu payments or other COAH mechanisms for providing affordable housing. This provision will be deleted in future amendments to prevent further confusion.

N.J.A.C. 5:97-8.2(b)

COMMENT: The rule proposal allows affordable housing money to be deposited in the State of New Jersey cash management fund. What is this fund?

RESPONSE: The State of New Jersey cash management fund is an investment account managed by the Department of Treasury. The municipality maintains its own account within this fund, and affordable housing trust fund monies are at all times distinguishable from accounts maintained by other investors and available to the municipality for affordable housing purposes.

N.J.A.C. 5:97-8.3

COMMENT: The commenter support the proposed rules that raise the development fees for new construction from one percent to 1.5 percent of equalized assessed value for the residential and from two percent to three percent for EAV for non-residential. The commenter feel that this is an appropriate and a welcome change and it will create more funding for municipalities to address their constitutional affordable housing obligation.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The rules should clarify that development fees only apply to construction which is defined as follows: "'Construction' shall include new construction and additions, but construction shall not include alterations, reconstruction, renovations and repairs as those terms are defined under the State Uniform Construction Code, N.J.S.A. 52:27D-123, and the rules promulgated thereunder."

RESPONSE: According to the State Uniform Construction Code, "construction" means the construction, erection, reconstruction, alteration, conversion, demolition, removal, repair or equipping of building structures. The application of development fees to additions, alterations, renovations, and reconstruction work assists municipalities that are mostly built out in meeting their affordable housing obligation.

COMMENT: The sliding scale for development fees is not well documented or supported in the regulations. The agency should abandon its attempt to overcomplicate the subject, and simply establish a standard development fee as in past regulations.

RESPONSE: As a result of multiple comments that the tiered development fee option was confusing and unfounded, the rule as adopted does not include the sliding scale approach. The intent of the tiered development fee option was to allow an exemption for "middle income housing," but given that "middle income housing" is not equally distributed throughout all municipalities, the Council anticipated that municipalities with an abundance of "middle income housing" might not opt for the tiered approach, and municipalities without a significant amount of "middle income housing" would opt for the tiered approach. In this way, the intent of the Council would not be realized, and the tiered development fee option would result in a further inequity in development fee revenue between municipalities, based on housing values.

COMMENT: Clarification is needed regarding the Council's proposal on development fees, especially with regard to residential development. Typically, residential encompasses both Class 2 Residential (one to four-units) and Class 4C Apartments (five+ units), as defined by the property tax class definitions contained in N.J.A.C. 18:12-2.2. The commenter encourage the Council to clarify this issue regarding the residential nature of Class 4C Apartments by inserting direct reference to the statue and ensuring statewide consistency in application of any fees, so that all Class 4C Apartments are properly classified as residential for the purposes of the development fee calculation.

RESPONSE: Class 4C Apartments are classified Statewide as use group R-2--residential multi-family and do not require further clarification.

COMMENT: The development fees should not be increased for residential and non-residential development and should remain at one percent and two percent, respectively. Growth share ordinances over the last few years had a significant negative impact on the residential and non-residential market. Increasing the fees would further negatively impact development in New Jersey. Based upon municipal governments history of avoiding their obligation and not spending affordable housing funds, municipal government should not be given the opportunity to collect more money. The detriment of increasing the fees outweighs any benefit.

RESPONSE: The Council has the authority pursuant to the *Holmdel* decision to regulate development fees. The development fee percentages were last increased in 2004. In consideration of the substantial increase in municipal affordable housing obligations resulting from the 2007 Appellate Division decision, the Council felt it was appropriate to increase the fees to provide additional resources to municipalities to meet increased affordable housing obligations. To ensure that development fees are spent more expeditiously, the Council has established a new deadline of four years from the Council's approval of the spending plan for municipalities to spend any existing trust fund balance.

COMMENT: The commenter is greatly concerned that an increase of up to six percent in the non-residential fees municipalities may charge for the development of non-residential projects would be extraordinarily burdensome to long term care facilities and would have the unintended consequence of driving health care costs even higher for the elderly population. Considering the fact that a "nursing home" is often the only "affordable housing" option for many seniors, particularly low income Medicaid beneficiaries, that also need 24/7 nursing care, the commenter strongly recommends that the development, replacement or expansion of a licensed "nursing home" (which is a legal residence) be exempted from the imposition of any non-residential development fees.

RESPONSE: Pursuant to the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-8(c), a municipality may by ordinance exempt, according to uniform standards, charitable, philanthropic, fraternal and religious nonprofit organizations holding a tax exempt status under the Federal Internal Revenue Code of 1954 (26 U.S.C. §§501(c) or (d)) from the payment of any fee charged under this Act. The Council permits the imposition of a six percent development fee on additional dwelling units and/or floor area for both residential and non-residential developments as a result of the issuance of a "d" variance. Where a "d" variance is not issued or where a residential or non-residential structure is replaced or expanded within the confines of existing zoning, a development fee of up to one and one-half percent or up to three percent for residential and non-residential developments, respectively, may be charged. In the case of an expansion, the fee charged would be on the increase in equalized assessed value. The commenter should note that the Council recognizes the inherently beneficial use of nursing homes and will propose an amendment in the near future that will exempt the replacement square footage of a licensed nursing home that is consolidating and relocating to another facility within the same COAH region from imposition of a growth share obligation or associated payment in lieu of construction.

COMMENT: The increase - from one percent of equalized assessed value (EAV) for residential to 1.5 percent of EAV and from two percent of EAV to three percent of EAV for non-residential - is an appropriate and welcome change that will help create more funding for a municipality to address its constitutional affordable housing obligation.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The commenter suggests the following language changes: Where the non-residential development is situated on real property that has been previously developed with a building, structure or other improvement, the affordable housing development fee shall be equal to a maximum of two and a half (2.5) percent of the equalized assessed value of the land and improvements on the property where the non-residential development is situated at the time the final certificate of occupancy is issued minus the equalized assessed value of the land and improvements on the property where the non-residential development is situated as determined by the tax assessor of the municipality at the

time the developer or owner first seeks approval from the municipality under the "State Uniform Construction Code," N.J.S.A. 52:27D-123, and the rules promulgated thereunder or "Municipal Land Use Law," P.L. 1975, c. 291 (N.J.S.A. 40:55D-1 et seq.). The affordable housing development fee shall not be a negative and, if the above equation results in a negative amount, the affordable housing development fee shall be zero.

RESPONSE: The commenter's concern is already addressed by the rule provision that states ". . .Fees that result from additions and alterations shall be based on the increase in equalized assessed value that results from the addition or alteration."

COMMENT: Here COAH must apply the definition of "agricultural development" to prevent municipalities from charging purely agricultural development work or physical improvements to farm buildings and structures fees that are clearly out of proportion to the value of the development proposed. Even if a farm structure is classified "S" by the N.J. Uniform Building Code, it should not automatically be charged the full rate according to its size. Using use classes as a simple clue to municipalities that they can charge fees here is too gross a factor and works against any State or local efforts to enhance agricultural viability and retain agricultural land use. In addition, imposing a three percent developer's fee to the cost of construction of the typical self-storage facility would be such an oppressive cost factor that it would deny the opportunity to many families to enter this industry, which is in reality a "local" industry that has offered entry investment opportunities to many New Jerseyans. It would indeed create a barrier to entry to this industry and, when considered with the recently enacted sales tax on unit rentals and escalating property taxes throughout the State, would severely diminish the attractiveness of this type of investment.

RESPONSE: Pursuant to the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-8(c), a municipality may by ordinance exempt, according to uniform standards, charitable, philanthropic, fraternal and religious nonprofit organizations holding a tax exempt status under the Federal Internal Revenue Code of 1954 (26 U.S.C. §§501(c) or (d)) from the payment of any fee charged under this act. The Council will continue to honor a municipality's discretion as to what exemptions are appropriate per the MLUL and N.J.A.C. 5:97-8.3(e). The commenter should note that agricultural buildings, barns, stables, and other agricultural uses classified under Use Group U are exempt from payments in lieu of construction.

COMMENT: Imposing a three percent developer's fee to the cost of construction of the typical self-storage facility would be such an oppressive cost factor that it would deny the opportunity to many families to enter this industry, which is in reality a "local" industry that has offered entry investment opportunities to many New Jerseyans. It would indeed create a barrier to entry to this industry and, when considered with the recently enacted sales tax on unit rentals and escalating property taxes throughout the State, would severely diminish the attractiveness of this type of investment.

RESPONSE: Pursuant to the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-8(c), a municipality may by ordinance exempt, according to uniform standards, charitable, philanthropic, fraternal and religious nonprofit organizations holding a tax exempt status under the Federal Internal Revenue Code of 1954 (26 U.S.C. §§501(c) or (d)) from the payment of any fee charged under this Act. The Council will continue to honor a municipality's discretion as to what exemptions are appropriate per the MLUL and N.J.A.C. 5:97-8.3(e).

COMMENT: The proposed fees (to be imposed by municipalities) of three percent of equalized assessed value for non-residential development would be a significant disincentive to development, imposing costs that are far higher than competitive developments pay in neighboring states. This issue must be addressed or New Jersey will be facing regional competitive burdens. Development fees should not exceed 2.5 percent.

RESPONSE: The Council's appendix to the rule proposal contains a study by Nicholas Brunick, Esq., which demonstrates that affordable housing fees vary widely state by state, with some higher than in New Jersey. The development fee percentages were last increased in 2004. In consideration of the substantial increase in municipal affordable housing obligations resulting from the 2007 Appellate Division decision, the Council felt it was appropriate to increase the fees to provide additional resources to municipalities to meet increased affordable housing obligations.

To ensure that development fees are spent more expeditiously, the Council has established a new deadline of four years from the Council's approval of the spending plan for municipalities to spend any existing trust fund balance.

N.J.A.C. 5:97-8.3(c)

COMMENT: The rule states, "Residential development fees may be imposed pursuant to one, but not both of the following:" Four paragraphs follow; however, the commenter believes that only the first two are intended to apply to this subsection.

RESPONSE: The commenter is correct. The rule will be clarified.

COMMENT: With respect to development fees, COAH should eliminate the six percent limit for additional units and for additional non-residential development. COAH did not conduct a study to justify the six percent figure when it imposed it. Moreover, if the value of the rezoning exceeds the figure derived from the six percent calculation, municipalities should not lose the ability to capture their fair share of the benefits conferred through a rezoning or use variance.

RESPONSE: The Council has the authority pursuant to the *Holmdel* decision to regulate development fees. The Council carefully considered the impact of increasing the development fees and opted to increase the regular development fee to assist municipalities in addressing the increased affordable housing need, while keeping the "d" variance percentage as is so as to be sensitive to the economic return of the developer. The commenter should note that development fees, unlike a payment-in-lieu, are not intended to represent the subsidy needed to construct an affordable housing unit. It merely recognizes the linkage between residential and non-residential development to the need for affordable housing. However, the commenter should note that in the case of a rezoning or granting of a variance that would make possible the on-site provision of affordable housing, a municipality could require the on-site production of the affordable unit and would not lose the ability to capture its fair share of the benefits conferred. Alternatively, the municipality may identify and require a payment-in-lieu for offsite construction or for other affordable housing opportunities as planned for and included in an implementation schedule as part of a municipal Housing Element and Fair Share Plan.

N.J.A.C. 5:97-8.3(c)3

COMMENT: A municipality's Zoning Board of Adjustment grants "d" variances not just a municipality. Is the development fee of up to six percent of the equalized assessed value for each unit for all additional units or only for the additional affordable units?

RESPONSE: Affordable housing developments are exempt from development fees and therefore would not be impacted by this provision. When a "d" variance is granted for a market rate development, each additional unit realized may be subject to a development fee of up to six percent of its equalized assessed value.

N.J.A.C. 5:97-8.3(d)4

COMMENT: The commenter strongly supports COAH's encouragement to municipalities to use their authority and discretion to exempt, waive or reduce development fees in order to encourage agricultural non-residential development that would increase profitability and viability.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-8.3(e)

COMMENT: This provision states that development fees may be imposed and collected when an existing structure is demolished and replaced. Furthermore, the development fee that may be imposed and collected shall be calculated on

the increase in the equalized assessed value. In a developed municipality, a significant proportion of development results from the demolition and replacement of structures with new structures that bear no relation to the demolished structure. Moreover, as long as the municipal growth share is calculated on the total area of the new structure then the development fees should be calculated on the total equalized assessed value (not the net increase in equalized assessed value).

RESPONSE: The net increase in equalized assessed value would be subject to the development fee of one and one-half percent of equalized assessed value for residential or three percent of equalized assessed value for non-residential development, respectively, if the development complies with current zoning for the site. If the replaced structure requires a "d" variance, it may be subject to the six percent rate on any additional dwelling units or floor area above what is permitted. The Council believes that overall affordability and equity is addressed where property owners wishing to improve a pre-existing structure are assessed on the net increase in equalized assessed value rather than permitting the development fee on the new total equalized assessed value. Allowing development fees to be calculated on the total new equalized assessed value ignores the lost value to the owner from the demolition of the original structure. The commenter should note that the rule will be amended in the near future to permit the subtraction of demolitions of previously occupied non-residential structures from growth share.

COMMENT: Non-profit organizations should be automatically exempt from development fees. Very few municipalities provide for such an exemption and increasing development fees to 1.5 percent for residential development and three percent for non-residential development would have a significant impact. Consideration should be given to automatic exemptions for hospitals.

RESPONSE: Pursuant to the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-8(c), a municipality may by ordinance exempt, according to uniform standards, charitable, philanthropic, fraternal and religious nonprofit organizations holding a tax exempt status under the Federal Internal Revenue Code of 1954 (26 U.S.C. §§501(c) or (d)) from the payment of any fee charged under this Act. In addition, under the provisions of N.J.A.C. 5:97-8.3(e), municipalities have the option of exempting specific types of developments, such as those of not-for-profit entities, including hospitals, from the imposition of development fees. In fact, the rule proposal specifically references hospitals as entities that municipalities may exempt from development fees. The commenter should note that the rule will be amended so that replacement square footage of hospitals that relocate within the same COAH region have been exempted from payments in lieu of construction requirements.

N.J.A.C. 5:97-8.3(e)3

COMMENT: COAH should revise this exemption from development fees to include the phrase in COAH's prior rules (and in the majority of development fee ordinances) that a town could impose a fee on "a developer seeking a substantial change in the approval." In addition, COAH should craft language that allows a municipality to impose an amended development fee zoning ordinance on a development where the protections period has lapsed.

RESPONSE: The provision at N.J.A.C. 5:97-8.3(e)3 will be amended in the near future to reflect the commenter's concerns.

N.J.A.C. 5:97-8.3(e)5

COMMENT: The ability to make these reductions or exemptions in certain areas of town could support an Agricultural Enterprise District or the land identified in a Farmland Preservation Planning Incentive Grant.

RESPONSE: The Council agrees with the commenter.

N.J.A.C. 5:97-8.4

COMMENT: COAH must work with the NJ Department of Agriculture and the State Agriculture Development Committee to determine whether municipalities should have the option of payment in lieu of constructing affordable units on site when dealing with non-residential development on farms, "agricultural development."

RESPONSE: The appropriateness of on-site or offsite construction of affordable units is at a municipal discretion provided it is consistent with the site suitability criteria under N.J.A.C. 5:97-3.13. The rule provision regarding inclusionary zoning permits, but does not mandate payments-in-lieu as an alternative to on-site construction. COAH encourages the development of affordable units that are consistent with the principles of sustainability, including those outlined in the State Development and Redevelopment Plan.

N.J.A.C. 5:97-8.4(b)

COMMENT: "The amount of payments in lieu of constructing affordable units on site shall be established by ordinance and consistent with the amounts detailed in N.J.A.C. 5:94-6.4(g)": The rule reference should be corrected to paragraph (c)5; subsection (g) is about inclusionary units having access to all community amenities available to market-rate units.

RESPONSE: The commenter is correct. The rule will be clarified to reference N.J.A.C. 5:97-6.4(c).

N.J.A.C. 5:97-8.4(c)

COMMENT: The developer's agreement states that the developer will provide a 10 percent set aside on site and an additional cash payment will be deposited into the municipality's affordable housing trust fund. Could that cash payment be used by the municipality to pay for an RCA? Nowhere in the agreement does it state that it is a payment in lieu of construction.

RESPONSE: No amount of cash payment in lieu of constructing a required affordable housing unit may be transferred through a Regional Contribution Agreement. In an inclusionary zoning ordinance, the minimum set-aside is constructed onsite. A municipality may provide the option of off-site construction of the minimum affordable units or require a payment-in-lieu of providing the whole or fractional affordable units required by zoning subject to N.J.A.C. 5:97-6.4(c). The commenter presents a scenario where an inclusionary zoning district or site permits the onsite construction of half of the required affordable set-aside and half through a payment in lieu of constructing the affordable units on-site. In-lieu payments must be deposited in the affordable housing trust fund, must be distinguishable from development fees in COAH's annual trust fund monitoring and must be used to create affordable units within the municipality. Non-residential payments-in-lieu where residential development is not a permitted use may be used for an RCA.

COMMENT: COAH should clarify whether in-lieu payments from entirely non-residential development may be used to fund an RCA.

RESPONSE: Previously, the rules only stated that payments in lieu of construction from residential and mixed use development cannot be used to fund RCAs, from which it can be inferred that payments in lieu of construction from non-residential development where residential development is not a permitted use can be used to fund RCAs. The rule has been clarified accordingly.

COMMENT: "Payments in lieu of constructing affordable units ... shall only be used to fund eligible affordable housing activities within the municipality," that is, no RCAs (see also N.J.A.C. 5:97-8.7(a)4). It would seem that a municipality should maintain a separate trust fund for payments in lieu if it is also paying for RCAs, in order to demonstrate that payments in lieu are not being used to fund RCAs. Alternatively, RCAs must be funded out of a general municipal account. Additionally, N.J.A.C. 5:97-8.5 provides for barrier free escrow account which must be maintained separately from other escrow. This would require increased monitoring by a municipal employee and add

upon the layers of separate housing trust fund accounts which must be maintained.

RESPONSE: As currently practiced, payments in lieu of constructing affordable units must be identifiable at all times but do not require a separate account from development fees. The proposed rules require that all affordable funds collected for the creation, modification or preservation of affordable units be kept in the same account but that they be distinguishable by source of collection. This practice does not require any additional monitoring than what is already in practice. Barrier free escrow funds may only be used in accordance with N.J.A.C. 5:97-3.14. The rule has been clarified to state that payments-in-lieu of construction from non-residential development where residential development is not a permitted use may be used to fund RCAs (N.J.A.C. 5:97-8.4(c)).

N.J.A.C. 5:97-8.4(e)

COMMENT: Projects that received preliminary and/or final approval prior to the adoption of an ordinance increasing a development fee should be exempt from the increase, so long as the project remains under the period of protection under the MLUL. There was much confusion over this the last few years as COAH's comment in the New Jersey Register states that the developer is protected from the increase, but COAH's handbook states it is the fee at the time of building permit. If a developer plans for a project based upon a fee that was in effect at the time of approval, the developer should be exempt from any increase and should pay the fee in place at the time of approval, provided the period of protection under the MLUL has not lapsed. Should COAH not change this rule, at a minimum the development fee percentage should be locked in at time of application of the building permit. If half is paid at building permit, the fee is increased by ordinance and then the application seeks a CO, the developer should not be subject to the higher fee at CO.

RESPONSE: The Council's response in the November 2004 New Jersey Register is incorrect. If no development fee ordinance is in effect at time of preliminary or final site plan approval, the municipality may not subsequently impose and/or collect a development fee at the time of building permit and/or certificate of occupancy. Where site plan approval does not apply, a zoning and/or construction permit shall be synonymous with preliminary or final site plan approval for this purpose. However, regardless of the time of collection, the fee shall be based on the percentage that applies on the date that building permits are issued. The rule provision at N.J.A.C. 5:97-8.3(e)3 and (f) will be amended in the future to reflect this change.

N.J.A.C. 5:97-8.7

COMMENT: COAH should allow municipalities to utilize in lieu fees to fund RCAs. N.J.A.C. 5:97-8.7 sets forth the housing activities that are eligible for the use of affordable housing trust funds. RCAs are one of the housing activities that meet the eligibility criteria. However, N.J.A.C. 5:97-8.7(a)4 stipulates that payments in lieu of construction collected from residential and mixed-use development may not be used to fund RCAs. The regulations do not explain why municipalities cannot use in lieu affordable housing fees to fund RCAs. The FHA does not render an affordable unit created through an RCA as any less valuable than an affordable unit created in any other way. Thus, COAH should not restrict the flexibility of a municipality to use in lieu monies to best meet its fair share quota.

RESPONSE: The Council's position on in-lieu fees is consistent with the growth share methodology which provides for the creation of affordable housing in proportion to the actual growth that occurs within the municipality. The intent of the Council's regulation is to promote the production of affordable housing tied to inclusionary residential development within the municipality. In recognition that affordable housing tied to inclusionary non-residential development may not always be feasibly produced on-site or within the municipality, the rule has been clarified to state that payment in lieu of construction from non-residential development where housing is not a permitted use may be used to fund RCAs (N.J.A.C. 5:97-8.4(c)).

COMMENT: The rule proposal allows affordable housing money to be used for inclusionary developments. COAH should require municipalities to provide a meaningful density bonus for building affordable housing so that such

subsidies are necessary only to subsidize very low income units.

RESPONSE: The Council's regulations with regards to inclusionary zoning will be amended in the near future to address the commenter's concern.

COMMENT: The rule proposal allows affordable housing money to be used for "green building strategies." COAH must analyze the use of affordable housing for green building strategies. It must determine that the money invested in "green building strategies" is providing meaningful cost savings for low and moderate income households.

RESPONSE: The provision at N.J.A.C. 5:97-8.7(a)9, to which the commenter is referring, will be clarified in a future proposal to address acceptable standards as follows: Green building strategies designed to be cost-saving for low- and moderate-income households, either for new construction that is not funded by other sources, or as part of necessary maintenance or repair of existing units, in accordance with accepted national standards or such guidance as may be provided by DCA and HMFA.

COMMENT: This section should clarify that the Housing Trust Fund can also be available for use, not only as a direct grant, but also as a soft loan or even as a guarantee (operating, rent-up, construction completion, etc.). In this way the fund can be both used, but then replenished on these occasions.

RESPONSE: The Council recognizes that it is not feasible to list every possible scenario for the use of trust fund monies and has included the provision in N.J.A.C. 5:97-8.7(a)12 that "[a]ny other activity as specified in the approved spending plan" as an eligible use to address the commenter's concern. The example provided by the commenter is an eligible use of trust fund resources.

COMMENT: COAH should allow development fees to be used to help defray the costs of parking, especially structured parking within inclusionary developments.

RESPONSE: The rule will be amended in the near future to state that a municipality may use development fees to defray on a pro-rated basis the costs of structured parking in the case of inclusionary developments based on the proportion of affordable housing units included in the development.

N.J.A.C. 5:97-8.8

COMMENT: COAH should either revise the requirement for 30 percent of development fees to be spent on affordability assistance and change it to a voluntary program or reduce the affordability assistance to some minor amount of no more than five percent of collected development fees. The proposed new rules have created potential affordable housing shortfalls or affordable housing subsidy shortfalls - by applying the new ratios retroactively to previously approved developments and by only permitting up to a two percent development fee on small residential developments of four lots/units or less. For COAH to also have this requirement to expend 30 percent of collected development fees on affordability assistance (where no new affordable unit is being created) will only exacerbate an already potentially disastrous municipal financial

RESPONSE: A 30 percent affordability assistance requirement has been part of COAH's regulations on development fees since its original rule adoption following the Holmdel decision. The Council chose to institute a flat 30 percent affordability assistance requirement in response to a variety of concerns including requests that COAH do more to address housing needs of very low-income households and requests for assistance for homeowners having difficulty, homeowner association payments, among other areas. However, COAH will monitor the effectiveness of this requirement over time and may propose future amendments to address the commenter's concerns. In addition, while trust funds are an important funding source, there are a number of policy tools available to municipalities that require little in the form of subsidies. Inclusionary zoning, for example, would require the developer to provide the affordable housing on-site, or as a possible alternative, to provide a payment in lieu of or off-site construction. Other options include, but are not limited to, preserving existing affordable units through extension of affordability controls,

partnering with developers in taking advantage of federal and state governmental funding, that is, Balanced Housing Program and the Low Income Tax Credit Program, and accessory apartment program and a market to affordable program which require minimum subsidies of $ 20,000 to $ 25,000 and $ 25,000 to $ 30,000, respectively.

COMMENT: COAH should clarify whether development fees must be used for income-eligible households in market-rate units as stated in COAH's proposed rule Summary. COAH's rule Summary states that municipalities should provide an opportunity "for affordability assistance to income-eligible households in market-rate units;" however, it does not appear that the rules section on affordability assistance would actually require such usage of development fees on market-rate units. To be clear, the commenter would not want to be forced to use development fees on market-rate units when these limited resources are necessary to produce affordable units. Using development fees on market-rate units would dilute our needed affordable housing funds.

RESPONSE: This rule provision does not require a portion of the affordability assistance component to be used for the subsidization of market rate units occupied by low- and moderate income households, but permits it. However, due to municipal concerns over shortages of funds, this provision of the rule will be deleted from the rule in a future amendment.

COMMENT: The percentage of development fees that must be used for affordability assistance is 30 percent. 30 percent at what point in time? For the year? For the monitoring period? Of the entire account? In previous rules, it was 30 percent after subtraction of new construction programs.

RESPONSE: For the purpose of a spending plan, the municipality shall determine 30 percent of the projected revenue from development fees and interest earned. However, at monitoring the amount will be based on the actual revenue at that time.

N.J.A.C. 5:97-8.8(a)

COMMENT: The Council should revise paragraph (a)1 to include down payments for manufactured home acquisition and rental assistance for mobile home lots as eligible affordability assistance programs.

RESPONSE: COAH's provision for affordability assistance is broad so that the gamut of possible forms of assistance may be utilized by a municipality. Accordingly, a municipality wishing to offer assistance to an income eligible household in the form of a down payment or rental assistance for mobile homes would be within its rights to do so, provided that the down payment assistance is limited to non-traditional mobile homes, that is, land and pad ownership within the Housing Element and Fair Share Plan.

N.J.A.C. 5:97-8.8(a)2

COMMENT: N.J.A.C. 5:94-8.8(a)2 provides a bonus for developers by requiring "offering a subsidy to developers of inclusionary or 100 percent affordable developments or buying down the cost of low and moderate units in a fair share plan to make them affordable to very low income households." Once again the burden of the subsidy is upon the municipality.

RESPONSE: The provision does not require a subsidy or buy-down, but rather identifies these options as possible ways in which a municipality can meet its affordability assistance requirement by assisting very low-income households.

N.J.A.C. 5:97-8.9

COMMENT: N.J.A.C. 5:94-8.9 regulates the use of housing trust fund money and states that "legal or other fees related to litigation opposing affordable housing sites or objecting to the council's regulations and/or action are not eligible uses of the affordable housing trust fund." The rules do not indicate whether an analysis of the rules impacts to a

community are a valid use of the trust fund money.

RESPONSE: An analysis of the impact of COAH's proposed rules on a particular community is not a valid use of trust fund money.

N.J.A.C. 5:97-8.10(a)8

COMMENT: COAH should allow towns more time to expend existing affordable housing trust fund monies if it has a well-planned implementation schedule to expend the monies on eligible affordable housing activities over the balance of the third round. COAH's rule proposal seems to require towns to spend any remaining trust fund monies from the second round within four years of COAH's approval of the town's third round spending plan. This rule ends with "or in accordance with an implementation schedule approved by the Council (COAH)." COAH should clarify whether this last quoted phrase allows flexibility to a town that has a well thought out plan to spend existing monies that may extend beyond the noted four-year period.

RESPONSE: The rule provision at N.J.A.C. 5:97-8.10(a)8 permits municipalities to submit an implementation schedule that goes beyond the four years which addresses the commenter's concerns.

COMMENT: This section requires affordable housing trust fund money to be spent within four years of COAH approval of a spending plan, which is unrealistic as to the timeframe required for the provision of affordable housing. An appeal mechanism should be provided that would allow an extension in the use of funds where there is a finding by COAH that the extension is warranted due to unforeseen or uncontrollable circumstances. COAH would base extensions on the merits of individual situations.

RESPONSE: This provision refers to the municipality's trust fund balance as of the date of its third round petition. The Council believes that four years is an adequate amount of time in which to spend trust funds. However, where a municipality is unable to meet the four-year time frame, the rule provides that the municipality may submit an alternate implementation schedule for approval by the Council.

N.J.A.C. 5:97-8.11

COMMENT: The commenter supports the new provision (N.J.A.C. 5:94-8.11) that establishes rules to allow the expenditure of development fees on projects not included in the fair share plan. This will enable municipalities to expend development fee funds on emerging projects and foster the production of affordable housing.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-8.13

COMMENT: The commenter objects to the State's taking of the funds from the municipality's housing trust fund at any stage. However, if the developer fees are taken, it would be more reasonable to do so at the end of the round three period which would be 2018. While the objective of ensuring that the affordable housing trust funds are utilized for proper purposes is laudable, establishing arbitrary deadlines violates the Fair Housing Act. There is no provision in the Fair Housing Act that gives COAH the authority to effectively appropriate the municipalities' development fee funds and spend these funds. The consequences are well known of a municipality not fulfilling its legitimate affordable housing obligation and do not include COAH stepping into the shoes of the municipality to implement the Plan. The same is ultra vires.

RESPONSE: Under the proposed rule, the Council is given the authority to direct the expenditure of affordable housing trust funds only after a municipality has failed to comply with the requirements of Subchapter 8 and, in addition, has failed to remedy its non-compliance within a time period specified by the Council. A municipality that uses its trust funds in accordance with an approved spending plan and consistent with the Council's rules would not be

subject to these enforcement provisions. The intent of these provisions is to ensure that municipalities address their affordable housing obligation in a timely manner within the third round period. If the Council delays enforcement action until 2018, this objective would not be met.

COMMENT: The rule requires the expenditure of affordable housing money in accordance with a COAH approved spending plan. COAH must not grant extensions. Firm deadlines will require municipalities to build housing sooner rather than later.

RESPONSE: Pursuant to N.J.A.C. 5:97-3.2(a)4, municipalities are required to submit an implementation schedule that sets forth a detailed timetable for units to be provided within the period of substantive certification in addition to the spending plan and enforcement provisions, which will ensure firm deadlines are adhered to.

COMMENT: The commenter supports the Council's creation of the right for any party to petition the Council and present evidence that a particular municipality has failed to appropriately expend trust fund monies, as well as include a proposal to create or rehabilitate affordable housing. However, the commenter recognizes that standards are important. The commenter suggests that either 1) the Council pre-qualify such developers, be they for-profit or not-for-profit, or 2) require that any such petition include a detailed record of the petitioner's experience in providing affordable housing or rehabilitation of the same, and in so doing, establish their eligibility to receive and spend trust fund monies. The commenter believes that "pre-qualification" will assist in avoiding further administrative delays to the creation or rehabilitation of affordable housing.

RESPONSE: The Council believes that the current proposal contains sufficient standards. The Council would take into consideration a developer's experience, which would be detailed in the motion, prior to rendering a determination.

COMMENT: The commenter is pleased that the rules propose a possible sanction for the failure to make timely and appropriate expenditures of affordable housing trust fund dollars. The commenter supports this change.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-8.13(b)5

COMMENT: The commenter applauds the requirement that current balances in trust funds be spent on affordable housing within four years. However, it is critical that municipal housing trust funds be spent in that town, or at the very least, in the same county. The commenter proposes that in instances where a municipality does not use its old or new developer fees within four years, anyone with a State approved plan can receive, as of right, municipal trust fund money to address affordable housing needs in the town, or if not feasible elsewhere in the county, but not elsewhere in the region. In addition, housing units built elsewhere in the county under this provision should not go toward reducing the municipality's housing obligation. Likewise, towns that do not want to spend their resources on affordable housing within their borders should not lose their ability to collect trust fund money by not using it, or by not submitting a spending plan. Losing its ability to collect such funds may not be a penalty at all for a town that does not want to address affordable housing, and the funds are desperately needed.

RESPONSE: The Council appreciates the commenter's support. A municipality's ability to impose and collect funds and maintain its affordable housing trust fund is conditioned upon compliance with all requirements pertaining to affordable housing trust funds, and the Council intends to monitor such compliance on an annual basis. Under the proposed rules, if the Council determines that a municipality is not in compliance, the Council has the authority to direct the manner in which all trust funds shall be expended. To the extent practicable, the Council shall assign such funds to mechanisms within the municipality's Fair Share Plan. If such funding is unnecessary, the Council, in consultation with the DCA Division of Housing, will consider affordable housing proposals outside the municipality. Because affordable housing need has been determined on a regional basis pursuant to the Fair Housing Act, it is reasonable to consider the region as well as the county. Affordable units resulting from this process would be eligible for credit only in the

municipality in which the units are constructed or rehabilitated.

N.J.A.C. 5:97-9

COMMENT: As noted by the Public Advocate in its October 22, 2007 report, "Mandates to build housing for lower income ranges must also be combined with adequate incentives and the coordination of public subsidies so that low-income units actually are built." Changing UHAC affordability standards, providing minimum presumptive densities, and using public subsidies to reach very-low-income households would provide very significant amounts of very-low-income housing. Please state whether COAH will amend its regulations (or work to have the UHAC amended) to include this combination of approaches.

RESPONSE: The commenter should note that the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26, are promulgated by the N.J. Housing and Mortgage Finance Agency, not COAH. The Council will forward the comments to the Agency, who may address the concerns in a future rule amendment. The zoning section of COAH's rule will be amended in the near future to provide minimum presumptive densities which will assist municipalities to provide very low income housing.

COMMENT: A property tax increase could result in the owner of the COAH unit not being able to pass on cost increases to the tenant, resulting in a undue burden on the property owner and an unintended risk. The nine percent cap language should be modified to exclude a property tax increase as a reason for a rent increase exceeding the cap.

RESPONSE: Property taxes for rental units are based on gross income to the property owner from the tenants. Therefore, property taxes due on a rental unit that is affordable to low- or moderate-income tenants and is receiving COAH credit is taxed proportionately to the amount of income the owner is receiving. To increase the rents on affordable units greater than nine percent in one year could result in the unit being unaffordable to the low- and moderate-income tenants resulting in increased vacancies.

COMMENT: Affordable rental units constructing under the LIHTC program should not be required to follow UHAC.

RESPONSE: The commenter should note that comments regarding N.J.A.C. 5:80-26 may be addressed in a future rule proposal.

COMMENT: N.J.A.C. 5:97-4.2(c) provides for credit if controls are extended through December of 2018. COAH must address how the deed restrictions that are expiring during the third round cycle may be extended without raising legal issues.

RESPONSE: Deed restriction documents on ownership units going into service after July 14, 1989 and before October 1, 2001 provide at least two mechanisms that municipalities seeking extending controls may utilize. The municipality may either purchase the unit at the maximum allowable affordable resale price or extend the controls by ordinance or resolution with consent from the owner to amend the deed.

COMMENT: N.J.A.C. 5:10-11.1 requires at least one onsite manager in any rental development over eight units. The problem is that in an all-affordable project, this unit cannot be affirmatively marketed in accordance with COAH rules. The rules should be adjusted to allow one unit to be occupied by such a hired manager and still be counted as a credit as long as the manager is income eligible to begin with. Affirmative marketing in this case is impractical. Or in a development with mixed affordable and market rate units, the manager must occupy one of the market units.

RESPONSE: Affirmative marketing is a basic requirement for all COAH units that are intended to address a municipality's growth share obligation. The Supreme Court, in the *Warren* decision, generally invalidated residential preference for all units that meet the regional need and provided very specific guidelines on any residential preference. As a result, a municipality may not receive credit for a unit which is used to house an employee of the development.

COMMENT: It is crucial to involve employers in providing housing for employees who will hold these jobs. COAH should seek permission from the General Assembly of New Jersey to establish a category of employer-funded housing for those who are making less than 60 percent of area median income.

RESPONSE: Affirmative marketing is a basic requirement for all COAH units that are intended to address a municipality's growth share obligation. The Supreme Court, in the *Warren* decision, generally invalidated residential preference for all units that meet the regional need and provided very specific guidelines on any residential preference. The commenter may request the Legislature to make requested changes to the Fair Housing Act.

COMMENT: COAH should give a density bonus to developers who build at least six units per acre, and direct at least 10 percent of their affordable housing to households at or below 30 percent of median income.

RESPONSE: The Council will amend its rules in the near future to provide presumptive densities based on SDRP Planning Areas and to clarify that at least 10 percent of affordable housing in rental developments shall be affordable to households with an income at 30 percent of regional median income and that affordable rental units so priced shall be eligible for a very low-income bonus.

COMMENT: The Third Round regulations broadly require compliance with the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26. The commenter objects to the incorporation of this regulation into N.J.A.C. 5:97. As noted in the Public Advocate's recent report, COAH historically has done almost nothing to serve New Jersey's very-low-income households, even though they are one-third of the households COAH is supposed to serve. The most significant and easiest change COAH could make in this regard is to modify UHAC affordability standards to provide 15 percent of all affordable housing as very-low-income housing, including reaching households at 20 percent of median income in rental housing. COAH can feasibly create housing for very-low-income households as part of every municipality's fair share plan through changing the income distribution requirements in the UHAC. These changes would allow every COAH development to serve very-low-income people, without the need for additional subsidies. Please state whether COAH will amend its regulations (or work to have the UHAC amended) to include this approach.

RESPONSE: The commenter should note that comments regarding N.J.A.C. 5:80-26 are outside the scope of this rule proposal, but that they may be addressed in a future rule proposal. The Council will forward the comments to the N.J. Housing and Mortgage Finance Agency, who may address the concerns in a future rule amendment.

COMMENT: The commenter requested that COAH support a meaningful set-aside for lower-income or households. For the thousands of people who live with aging caregivers or who live in institutional settings awaiting community placement, the difficulty of finding affordable housing is compounded by the additional difficulty of finding affordable housing that is also accessible to people with disabilities that impact mobility, communication, or self-care. Statewide in New Jersey, about 5,000 mental health consumers live in group homes and supervised apartments. Thousands of consumers, however, live with family members, are homeless, or must purchase housing on their own. The affordable housing crisis that confronts individuals with developmental disabilities is equally severe. The Department of Human Services has identified more than 2,300 individuals residing in developmental centers who are able to live in the community with supports and who do not oppose community placement. But without available affordable housing, we will never meet the needs of this population. In addition, more than 1,000 individuals with mental illnesses remain in our State psychiatric hospitals although there is no clinical or medical reason for them to be detained. These individuals are on CEPP, an acronym which stands for "conditional extension pending placement." This simply means that there is no housing available for the patient, and so their time in the hospital is extended until appropriate placement is found. For people with very low incomes - including thousands of mental health consumers, individuals with developmental disabilities, and senior citizens - having a number of affordable, accessible housing units set aside will make the difference between remaining in a restricted institutional setting or reintegrating into their communities.

RESPONSE: The commenter should note that the FHA was amended in 2005 to require 10 percent of all

townhouse units to be accessible. N.J.A.C. 5:97-3.14 sets forth rules dictating the provision of affordable accessible units. Further, the Council believes that the mechanisms set forth at N.J.A.C. 5:97-6.10, Supportive and special needs housing, and 6.11, Assisted living residences, provide incentives for the construction of affordable units that serve people with disabilities, mental health consumers, individuals with developmental disabilities and senior citizens. N.J.A.C. 5:97-3.7 provides incentives for the production of very low income affordable housing through the grant of a one for one bonus credit for units deed restricted to be affordable to a very low income household.

COMMENT: Issues of enforcement need to be addressed. It is the commenter's understanding that enforcement is largely left up to local municipal court and local code enforcement. The commenter believes that the municipal court is woefully inadequate to deal with this issue. Fines are generally capped by statute and are relatively low, and it is rare that maximum fines are imposed. Municipal code enforcement is an inadequate way to "police" landlords and applicants who fail to abide by the rules. Many municipalities will not have the staff capability to enforce these regulations. The State should establish some minimum fines and penalties for violation of COAH and UHAC regulations and should consider other enforcement mechanisms.

RESPONSE: The municipality is responsible for enforcing the obligations imposed on owners by the deed restriction placed on the unit. These restrictions allow the municipality to foreclose on unit owners who fail to meet the requirements of the deed restriction or affordable housing mortgage. The municipality may choose to pass ordinances designed to encourage owners to comply with affordable housing restrictions by imposing penalties prior to the pursuit of foreclosure as long as foreclosure remains an option. Legislative action would be necessary to allow the State to impose fines and penalties for violation of COAH and UHAC regulations. The commenter should note that the Council requires the municipality to identify a municipal housing liaison, whose training is paid for by COAH, as set forth at N.J.A.C. 5:97-17.3(b). The Council believes that the training provided under the rules will give municipalities the tools and knowledge needed to enforce and carry out the rules.

COMMENT: COAH ought to coordinate its plans and policies and regulations with the Federal government. For example, COAH requires a 30-year deed restriction in order to get credit for renewing existing deed restrictions, but the Federal statute says that the maximum t allowed is 15 years. Further, throughout the rules there are various places where there are specific UHAC exemptions and other places that require UHAC applicability. Exceptions to UHAC should be clarified in one location. For example, N.J.A.C. 5:94-3.3 requires a low/moderate split of the fair share obligation; however, low income housing tax credit projects have been exempt from that split. Now, it appears that the town is obligated to the split and only UHAC governs a project. UHAC does not contain an exemption for LIHTC projects. As in the past, LIHTC properties should be exempt from the UHAC and the low/mod split. Additionally, project based assistance (PBA) units that have 10-year controls (in the form of a contract between the Public Housing Authority and the property owner), which are then renewable, are a valuable tool for creating affordable housing for low and very low income households. As proposed, N.J.A.C. 5:97 refers to UHAC for affordability periods, and UHAC requires at least 30-year affordability controls unless the unit is in a workforce housing census tract, in which case the affordability control must be at least 10 years. The effect of this rule is to encourage concentrations of poverty as the PBA unit must be located in a workforce housing census tract in order for a municipality to gain COAH credit. N.J.A.C. 5:97 should specifically grant municipalities credit for PBA units regardless of the income level of the census tract. This will encourage integration of income levels. Since HUD requirements apply, PBA units should be exempted from UHAC.

RESPONSE: The commenter should note that comments regarding N.J.A.C. 5:80 and exemptions thereto are outside the scope of the proposal. The Council will forward the comments to the N.J. Housing and Mortgage Finance Agency, who may address the concerns in a future rule amendment. To the Council's knowledge, no Federal statute limits the amount of time for which a deed restriction may be extended. As such, the Council believes that longer control periods do not interfere with HUD's affordability goals. With regard to units receiving project based vouchers with 10-year affordability controls, the municipality may seek a waiver pursuant to COAH's waiver criteria if it believes these units should be eligible for credit.

COMMENT: COAH rules and/or the UHAC need to address another phenomenon where total household income is

to be used as the criteria for determining eligibility. It seems that the definition of household needs to be addressed. Typically, household income is the total income of all members of a household. However, this leaves out a large and growing number of potential occupants of affordable housing units. It is not uncommon for adults to have to "return home." This can be caused by many factors, divorce, college graduation, becoming a widow or widower, job loss and extended unemployment, etc. Essentially they are "households within a household." There are numerous examples of people in one of these types of situations, seeking affordable housing. However, when it comes time to qualify them, if the entire household income is counted, as is typically done, they often cannot qualify. It is certainly plausible to suggest that the rules may be interpreted to consider people in this situation as their own household, but it needs to be made clear in the rules.

RESPONSE: This comment is outside the scope of the rule proposal. The commenter should note that the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26, are promulgated by the N.J. Housing and Mortgage Finance Agency, not COAH. The Council will forward the comments to the Agency, who may address the concerns in a future rule amendment.

COMMENT: The way income is calculated in the UHAC is different than HUD or HMFA's method. Is there a way to make all of these consistent in order to minimize complication and confusion? The differences are not great, but there have been many times when people are very close to qualifying then depending upon the methodology used they may or may not qualify.

RESPONSE: The commenter should note that the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26, are promulgated by the N.J. Housing and Mortgage Finance Agency, not COAH. The Council will forward the comments to the Agency, who may address the concerns in a future rule amendment.

COMMENT: What is the economic impact from changing the sale price and rent calculation by using the regional median income limit for each housing region versus the consumer price index? Owners of existing COAH rental projects will lose faith in the system and will hesitate to participate in future new projects unless the facts are provided concerning the economic impacts.

RESPONSE: The Council has recognized that basing increases in rents and sale prices on the Consumer Price Index (CPI) rather than increases in regional median incomes has resulted in older units being priced above equivalent newer units. In order to address this potential inequity, the Council explored tying both rent and sale price increases to increases in regional median income. The Council believes this process will help assure the continued affordability of sale units with only marginal impact on unit owners, especially since their property taxes are adjusted depending on maximum resale price, thus their carrying costs are not affected by this change. When the Council looked at rental units, it was determined that the amount of variable costs faced by landlords made it impossible to tie allowable rent increases to increases in median incomes and it was determined to continue the current practice of allowing maximum rent increases based on CPI. This practice may result in some rental units' maximum rental price rising above what the market will bear, but the Council relies on owners of rental of property voluntarily lowering maximum allowable rents to meet the market and increase revenue rather than carrying vacant units.

COMMENT: COAH has not publicly responded to the Public Advocate's statements regarding the affordability range of housing that COAH credits and should do so. Specifically, COAH should address why it has not pursued the Advocate's recommended approach of "set[ting] specific requirements for a substantial number of units that are affordable for households at several income ranges below 40% of median income (e.g., 0-30%, 30-40%)."

RESPONSE: The proposed rules do not establish a general minimum requirement for very low income housing; however, affordable rental developments are subject to N.J.A.C. 5:80-26.3(d), which requires that 10 percent of all affordable rental units be priced available to households earning not more than 35 percent of median. A future rule amendment will clarify that a very low income bonus is available to for-sale units that are affordable to very low households earning 30 percent of median or below and to affordable rental units in excess of 10 percent of the total

number of affordable rental units. The Council will also propose future rule amendments with regard to the range of affordability. The Council believes that this strategy will provide sufficient incentives for municipalities to provide very low income housing while also providing opportunities for housing for those households between 30 and 50 percent of median. Municipalities may, through their zoning, create incentives for the provisions of housing for very low income households.

N.J.A.C. 5:97-9.1

COMMENT: The commenter believes that there is insufficient data available on the impacts of requiring a low/moderate split to LIHTC projects and that these impacts should be evaluated prior to making this low mod split a requirement for tax credit projects. There should be an open discourse on this subject that would involve both HMFA and COAH to arrive at a solution that best serves the current and future low and moderate income residents of this state.

RESPONSE: The commenter should note that the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26, are promulgated by the N.J. Housing and Mortgage Finance Agency, not COAH. The Council will forward the comments to the Agency, who may address the concerns in a future rule amendment.

N.J.A.C. 5:97-10

COMMENT: The rule appears to be in direct conflict with the provisions for the public hearing process and the procedures of the contents of the Municipal Land Use Law regarding the power to zone and the contents of a zoning ordinance. The MLUL (N.J.S.A. 40:55D-62a) grants authority to the governing body to "adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon." The statute goes on to require that "the zoning ordinance shall be drawn with reasonable consideration to the character of each district and its peculiar suitability for particular uses. . ." The MLUL also stipulates (N.J.S.A. 40:55D-65d) that a zoning ordinance may contain "reasonable standards of performance and standards for the provision of adequate physical improvements." COAH's rules, as currently proposed for the third round, erode municipal authority to zone by the following: a) giving special status to affordable housing proposals, b) requiring "municipal cooperation in granting reasonable variances and waivers," c) stipulating a "reasonable prospect for reimbursement" of infrastructure needs generated by affordable housing development, d) modifying the escrow and development review procedures, and e) requiring municipal "endorsement" of an affordable housing project to state agencies.

RESPONSE: The Council disagrees with the commenter that its rules are in violation of the Municipal Land Use Law. N.J.A.C. 5:97-10.3 states that the purpose of scheduling regular and special monthly meetings is to ensure that development applications are acted upon within time limits mandated in the Municipal Land Use Law. The municipality must still provide ample public notice and provide time at the meetings for public comments pursuant to the Municipal Land Use Law. The Council is mandated by the FHA to ensure that municipal ordinances do not contain unnecessary cost generating features. This section is necessary to prohibit municipalities from using the plan review process to stall development and to discourage developers of affordable housing. The Council believes that unless there are assurances that the review of these projects is permitted to move forward in an expeditious manner, the cost of affordable housing will be unnecessarily increased.

COMMENT: Inclusionary zoning that mixes COAH units with market rate units should be left to local determination of placement and configuration, whether in a municipal zone or in a municipal redevelopment area, in accordance with State law. Additionally, COAH should not impose RSIS on RSIS exempt cities. Specifically, N.J.A.C. 5:97-3.13(a)1 and 2 are not applicable to inclusionary zoning in zones and redevelopment areas, and N.J.A.C. 5:97-3.13(a)4 is not applicable to cities that are exempt from RSIS. COAH imposition of RSIS on exempt cities is unworkable.

RESPONSE: It is not the intent of the Council to impose RSIS on areas that are exempt through special area designations approved by the Residential Improvement Advisory Board. Any supplementary and/or alternative

standards approved by the Residential Improvement Advisory Board for these areas will be acceptable to the Council. N.J.A.C. 5:97-3.13(a)4 has been clarified to state "where applicable."

COMMENT: According to the rules, failure for the municipality to "cooperate" and "endorse" an application can result in revocation of certification. Why is the assumption that the municipality will preclude development of an affordable housing project?

RESPONSE: The Council is not assuming that the municipality will prevent development of an affordable housing project. In accordance with the FHA, the Council has broad authority to promulgate all rules necessary for carrying out the provisions and purposes of the Act, which includes the establishment of appropriate regulations regarding cost generating features and the municipal approval process. The Council believes that this section is necessary to prohibit municipalities from stalling development of affordable housing. The Council believes that unless there are assurances that the review of these projects is permitted to move forward in an expeditious manner, the cost of affordable housing will be unnecessarily increased.

COMMENT: The rules permit a developer to make a motion to get an administrative order to remove costs and expedite review. This allows COAH to play a pivotal role in disputes.

RESPONSE: The commenter is correct.

COMMENT: In a TDR receiving zone, it is possible to dictate what those sites look like. The municipality may require open space designations and go all the way down to the architectural detail. The Council should specify how this would be impacted by the removal of cost generative features from zoning ordinances. Removing these requirements undermines one of the benefits of TDR.

RESPONSE: The Council's rules are consistent with the mandates of the FHA, which requires municipalities to eliminate unnecessary cost generating features from municipal land use ordinances as a requirement of substantive certification. The Council may consider rule changes in the future that address TDR programs.

COMMENT: What is the test of reasonableness in N.J.A.C. 5:94-10.3? Basic zoning principles already dictate that variances shall be granted within reason provided they do not conflict with the basic ordinances and master plan and do not adversely impact any property owners. How will COAH decide when a variance denial is unreasonable? This section should have standards outlined or should rely on the MLUL.

RESPONSE: This language remains unchanged from N.J.A.C. 5:93. The Council does not believe the rule contradicts the MLUL. A determination on the legitimacy of a variance denial can only be determined on a case-by-case basis by the Council based on the facts presented. Existing case law generated by the implementation of the MLUL provides a significant amount of guidance in this area.

COMMENT: If the town doesn't produce an affordable unit within a certain time frame, there should be some kind of pressure for them to do it.

RESPONSE: Pursuant to N.J.A.C. 5:97-10.5, a developer of an affordable housing site in conformance with a Housing Element and Fair Share Plan may seek an administrative order from the Council requiring the municipality to remove unnecessary cost generating requirements or to expedite the municipal review of a development application of the affordable housing site by filing a motion pursuant to N.J.A.C. 5:96-13. If COAH grants such an administrative order, and the municipality continues to disregard the Council's directive(s), then the Council may dismiss the municipality from COAH's jurisdiction or revoke the municipality's substantive certification.

COMMENT: The "evaluation of unnecessary cost generating features" is absolutely biased and demonstrates no recognition of environmental and cultural considerations as necessary or for protecting public health and safety first and foremost. These rules only demonstrate that affordable housing will be the guise by which the poorest members of our

society will be forced to live in floodplains and our forward thinking towns will be unable to provide meaningful affordable housing while maintaining their citizens' quality of life and employers' expectations of open space, attractive downtown areas, and workforce housing. This rule should be entirely eliminated because it raises affordable housing requirements over other State agencies without recognizing their expertise or respecting their jurisdiction.

RESPONSE: The Council takes into consideration all environmental constraints as a whole when reviewing site suitability for the development of affordable housing. Affordable housing developments must be consistent with the site suitability criteria delineated in N.J.A.C. 5:97-3.13, which include consistency with the State Development and Redevelopment Plan and compliance with the rules and regulations of all agencies with jurisdiction over the site.

COMMENT: The rules require the municipality to "endorse" affordable housing applications to other government agencies and submit endorsement to COAH. This stipulation appears to make COAH part of the municipal land use approval process, and requires the municipality to be a lead participant in advancing a development application to other State agencies. The rule requires clarification as to whether it regards permitted uses or also includes requiring support for non-permitted uses. The municipality should not be placed in the position of having to sanction an application.

RESPONSE: The Council expects municipalities to do everything within their control to assist proposed affordable housing sites in order to receive and retain substantive certification. Municipalities will be expected to expeditiously endorse applications to other governmental agencies that require review and approval of that agency. The commenter should note that this section refers to sites included by municipalities in their Housing Elements and Fair Share Plans to address their constitutional affordable housing obligation. By the time the Housing Element and Fair Share Plan gets to petition stage, the approved use for that zone should be settled, or the proposed affordable housing development would not meet COAH's site suitability standards. Once the decisions are made as to the zoning, the Council's intention is that the application proceed in a timely fashion. In addition, once the municipality has received substantive certification from the Council, it must adopt its zoning ordinances pursuant to the FHA.

COMMENT: The commenter requests that COAH clarify the need to ensure that relevant development standards are not eliminated in the Highlands Region where the Legislature has specifically mandated that additional resource protection standards be established by the Highlands Council in the RMP and implemented through municipal Plan Conformance.

RESPONSE: The Council takes into consideration all environmental constraints as a whole when reviewing site suitability for the development of affordable housing. Affordable housing developments must be consistent with the site suitability criteria delineated in N.J.A.C. 5:97-3.13, which includes consistency with the State Development and Redevelopment Plan and compliance with the rules and regulations of all agencies with jurisdiction over the site.

N.J.A.C. 5:97-10.2

COMMENT: Effective on June 3, 1997, the RSIS (Residential Site Improvement Standards) were required to be used when a municipality is reviewing any application associated with a residential subdivision, site plan approval, or variance before any Planning Board or Zoning Board of Adjustment. The Residential Site Improvement Standards are intended to be not only minimum standards, but also maximum standards for the protection of the public health, safety and general welfare. There should be a requirement that inclusionary developments comply with the RSIS. But the language that suggests the towns that might want to go outside of the RSIS should have to justify it to COAH should be taken out. This is regulated by another agency. The Council should be concerned that developments are complying with the Residential Site Improvement Standards. A municipality, in general, cannot impose more stringent standards on residential development than the standards embodied in the RSIS

RESPONSE: The Council recognizes the authority of the RSIS for all developments and the rule will be amended in the near future to reflect this.

COMMENT: The proposed rules should clarify that this section shall not apply to standards that are consistent with the requirements under applicable state rules or regulations (for example, NJDEP stormwater rules or Highlands Regional Master Plan).

RESPONSE: The Council does not believe this additional language is necessary because it is addressed in N.J.A.C. 5:97-3.13. All affordable housing developments must meet site suitability standards, which includes consistency with the State Development and Redevelopment Plan, all applicable DEP regulations and compliance with the rules and regulations of all other agencies with jurisdiction over the site.

COMMENT: COAH must make it clear to municipalities that they could avoid many of the listed unnecessary embellishments that raise the cost of housing by developing clustered development on small lots using onsite wastewater treatment. This would be less harmful to the environment while preventing the unnecessary loss of many acres of productive farmland. By encouraging use of the best design standards, towns can maintain their essential character while providing much needed affordable housing.

RESPONSE: The Council appreciates the commenter's suggestion. The Council encourages clustered development and will provide more guidance on this concept in a future rule amendment.

COMMENT: Under prior rules, this section previously included cost reductions. The Council should expand this section to include cost reductions as well as the elimination of other cost generative items, controlled by the municipality, which can be waived for a municipally sponsored or 100 percent affordable housing project. These cost reductions and elimination of cost generative items should be applied to all governmental or quasi-governmental agencies not just municipalities. These items should include, but not be limited to, waiver of any required township fees, administrative application fees, inspection fees, building permit fees, recreation fees, tree removal or tree clearing permit fees, street lighting and fire hydrant fees. If certain expenses are incurred by the municipality in conjunction with the waiver of fees (that is, building permits) the spending plans should allow them to be reimbursed from the Affordable Housing Trust Fund. Additionally, escrow fees should be capped; and there should be an allowance for a waiver or a reduction in utility connection fees, specifically if municipally controlled. Special studies should not be required for 100 percent affordable sites that are included in the Fair Share Plan and Housing Element as they should have previously been vetted for site suitability pursuant to the rules; and expedited reviews and hearing schedules should be a requirement, along with special meetings.

RESPONSE: The Council is not aware of prior rules on cost generation that included cost reductions. However, cost reductions may be included in municipal ordinances to provide further incentives than the financial incentives required pursuant to N.J.A.C. 5:97-6.4. In addition, pursuant to N.J.A.C. 5:97-8.7(a)3, affordable housing trust funds may be used to finance extensions or improvements of roads and infrastructure directly serving affordable housing development sites. In the case of inclusionary developments, costs shall be pro-rated based on the proportion of affordable housing units included in the development. The request to reduce or eliminates fees or other items of other governmental or quasi-governmental agencies is outside the scope of the Council's jurisdiction because the Council does not have control over other governmental or quasi-governmental agencies. The Council determines general site suitability during plan review. However, as development occurs, specific requirements of other regulatory agencies are incorporated into the process. In addition, the determination of whether the design of the affordable housing development is consistent with the municipal zoning, subdivision and site plan ordinances may need special studies. Such studies may be used to foster proper design and to determine pro-rated off-tract improvement costs. Municipalities are required to design municipal ordinances to expedite municipal decisions on affordable housing development applications within the time limits mandated in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

COMMENT: The municipal ordinances should not allow the following: no tree replacement/reforestation requirements or in lieu fees; no open space requirements on-site or in lieu fees; no impervious cover limits, as State environmental regulations shall be relied upon to establish areas to be protected; no in lieu fees for recreation; on-site requirements for recreation facilities shall be reasonable; no requirements for environmental studies other than those

required to obtain State permits; a determination of application completeness or application review shall not require the appearance before any other municipal board or entity other than the planning board including, but not limited to, the environmental commission, the historic commission, or shade tree commission.

RESPONSE: A determination on the legitimacy of the above requirements can only be determined on a case-by-case basis by the Council based on the facts presented. If a developer requests relief from the Council regarding these requirements, the Council will review it on a case-by-case basis to determine if it is excessive. The municipality will be afforded the opportunity to provide its basis for the requirement.

COMMENT: COAH approved inclusionary developments have been approved as part of a very public process. There should be no fiscal studies required as affordable housing developments are a public need.

RESPONSE: The Council will amend the rule in the near future to prohibit fiscal studies for affordable housing developments that are included in the municipality's Housing Element and Fair Share Plan except in the case of a use variance application pursuant to N.J.S.A. 40:55D-70d(4) or 70d(5).

COMMENT: With regard to paragraph (a)3, what is the basis upon which COAH will deem open space, recreation, landscape, buffering, tree replacement and reforestation requirements to be "excessive"? What standards apply here? What entity will be authorized to make such determinations?

RESPONSE: The Council is the entity authorized to make such a determination. The Council is mandated by the FHA to ensure that municipal ordinances do not contain unnecessary cost generating features. A requirement on an affordable housing development becomes excessive when it is not essential to protect the public welfare and it is detrimental to the production of affordable housing or the financial feasibility of the development. A determination on the legitimacy of the above requirements can only be determined on a case-by-case basis by the Council based on the facts presented. If a developer requests relief from the Council regarding these requirements, the Council will review it on a case-by-case basis to determine if it is excessive. The municipality will be afforded the opportunity to provide its basis for the requirement.

COMMENT: If the development is located within a historic district, special improvement district, etc., those standards should be uniformly applied for all the units. The use of two set of design standards could be construed to as discriminatory.

RESPONSE: The RSIS has special provisions for special area designations approved by the Residential Improvement Advisory Board. Any supplementary and/or alternative standards approved by the Residential Improvement Advisory Board will be acceptable to the Council. N.J.A.C. 5:97-3.13(a)4 has been clarified to state "where applicable."

COMMENT: There is no statutory or legal necessity for these policies. It is unnecessary to provide additional incentives to developers when they are already receiving a one-unit bonus for an affordable housing unit. The Council should remove the entire N.J.A.C. 5:97-10.2.

RESPONSE: The Council's rules are consistent with the mandates of the FHA, which requires municipalities to eliminate unnecessary cost generating features from municipal land use ordinances as a requirement of substantive certification.

COMMENT: There should be no requirement of purchase of development rights (TDR, PDC, Highlands) for an inclusionary zone.

RESPONSE: This request is outside the scope of the Council's jurisdiction. The comments should be referred to the appropriate regulating agency.

N.J.A.C. 5:97-10.2(a)

COMMENT: The language in this section is very vague and may be difficult to implement in an objective manner. The commenter recommends that the language be amended to state that municipal ordinances should be no more restrictive than State policies, regulations and standards.

RESPONSE: Much of the language from this section remains unchanged from N.J.A.C. 5:93. The Council does not believe this change is necessary because the Council is not aware of difficulty in implementing these rules in the past and they are consistent with the Fair Housing Act.

N.J.A.C. 5:97-10.2(a)1

COMMENT: Impervious surface standards should be deleted from the list of "unnecessary cost generators." The regulation addresses "oversized" or "excessive" requirements, properly drawing a distinction between a cost that is necessary (providing water and sewer to the site, for instance) and one that is unnecessary (requiring extra-large facilities "without a reasonable prospect for reimbursement," N.J.A.C. 5:97-10.2(a)2). As to impervious surface standards, however, the rule requires relaxation of these standards without qualification, implying that they are unimportant and therefore dispensable. This is error. Hard surfaces impede the absorption of water for recharge of aquifer systems, indispensable to the maintenance of water supply and quality. Having too high a proportion of impervious surfaces may also interfere with a municipality's ability to comply with stormwater management requirements.

RESPONSE: It is not the intent of the Council to imply that impervious surface standards are unimportant or dispensable. Municipalities are required to eliminate development standards and requirements that are not essential to protect the public welfare. If the municipality's impervious surface standards are required to maintain the water supply and quality of the water then it is indeed a requirement that is essential to protect the public welfare and therefore not cost generating according to the Council's rule.

N.J.A.C. 5:97-10.2(a)2

COMMENT: The source of reimbursement is not identified and leaves open the door for municipal reimbursement of developer generated need for infrastructure.

RESPONSE: This language remains unchanged from N.J.A.C. 5:93. The future development referenced is not the same development the present developer is constructing; therefore, if the municipality wishes for the present developer to provide infrastructure for future development he is not building, there must be a reasonable prospect for reimbursement. In most cases, the developer's reimbursement agreement identifies upstream developers who will be responsible for their pro-rated State share.

N.J.A.C. 5:97-10.2(a)2 through 4

COMMENT: The rule requires a municipality to "give special attention" to various excessive water, sewer, storm water, open space, landscaping, reforestation, buffering, recreation, parking, road width and road specification requirements. "Giving special attention" is not helpful or productive. These practices must be prohibited. The RSIS creates standards for many of these issues and the municipality must comply with the RSIS standards.

RESPONSE: The Council recognizes the authority of the RSIS for all developments and the rule will be amended in the near future to reflect this. However, the RSIS does not regulate many of the other issues the commenter references. A determination on the legitimacy of the other requirements can only be determined on a case-by-case basis by the Council based on the facts presented. If a developer requests relief from the Council regarding these requirements, the Council will review it on a case-by-case basis to determine if it is excessive. The municipality will be

afforded the opportunity to provide its basis for the requirement.

N.J.A.C. 5:97-10.2(c)

COMMENT: The Council has no authority to regulate the bedroom mix of market-rate housing units. It is also poor planning to restrict municipalities in shaping the type of development desired. For example, transit oriented development (TOD) in an urban setting is appealing for young professionals who may not want three or four bedrooms. A municipality has a right (especially through redevelopment plans) to control the shape, look, feel, density and size, including the number of bedrooms within its borders.

RESPONSE: This language remains unchanged from N.J.A.C. 5:93. The Council is mandated by the FHA to ensure that municipal ordinances do not contain unnecessary cost generating features. Restricting the bedroom mix on the market-rate units in an inclusionary development may affect the financial feasibility of the development and, therefore, impose an unnecessary cost generating feature onto the developer.

N.J.A.C. 5:97-10.3

COMMENT: The requirement that reasonable variances and waivers be granted seems also to ignore that the variances are variances for a reason and if granting them is usually reasonable, then they should not be variances. COAH takes no notice that affordable housing is in fact an inherently beneficial use and therefore the positive criteria proof for a "d" use/density or "c" bulk variance has already been accepted.

RESPONSE: This language remains unchanged from N.J.A.C. 5:93. It is expected that the municipality do all that it can within its powers to expedite an affordable housing application and cooperate with developers, which means granting reasonable variances and waivers when necessary. The Council encourages municipalities to develop their affordable housing ordinances so that the development can be produced without any variances or waivers. However, a variance may be needed to make the development financially feasible or a variance may also be needed for an unusual case, such as an irregular lot size. In these instances rather than seek a zone change, which may take a longer period of time, a variance would expedite the process.

COMMENT: Development procedures say that the development review should not be concerned whether the sites are properly zoned since the housing development included in the Housing Plan has been a public process. Accordingly, it is beyond COAH's authority to dictate to a municipality before it how to consider development applications pursuant to the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 et seq.

RESPONSE: This language remains unchanged from N.J.A.C. 5:93. In accordance with the FHA, the Council has broad authority to promulgate all rules and regulations necessary for carrying out the provisions and purposes of the Act, which includes the establishment of appropriate regulations regarding cost generating features and the municipal approval process. The Council disagrees with the commenter that its regulations are in violation of the Municipal Land Use Law. In addition to the public process of adopting a Housing Element and Fair Share Plan, there is also a public process involved in adopting the ordinance. However, planning board, consultants and the public may provide input and comments on whether the design of the affordable housing development is consistent with the municipal zoning, subdivision and site plan ordinances, which as the commenter suggests, may improve the development. It should be noted, however that, excessive requirements on the developer may result in unnecessary cost generating features or delaying or obstructing the construction of affordable housing and may result in action taken by the Council.

COMMENT: COAH must clarify that a municipality may not require testimony on matters that are not subject to municipal jurisdiction. For example, a municipality may not require traffic testimony regarding the impact of proposed developments on County and State roads. A municipality must not be permitted to require testimony on issues that are subject to State permitting, such as but not limited to: letters of interpretation and the design of on site sewer systems.

RESPONSE: The Council does not believe any changes are necessary because the MLUL at N.J.S.A. 40:55D-53.2 states that a professional shall not review items which are subject to approval by any State governmental agency and not under municipal jurisdiction except to the extent consultation with a State agency is necessary due the effect of State approvals on the subdivision or site plan. The Council recognizes that County jurisdictional issues, for example, traffic, are more likely to be part of a development application than State matters, yet the MLUL at N.J.S.A. 40:55D-53.2 doesn't directly address them. Given the purpose and scope of Subchapter 10, the Council finds that it is only appropriate for local agencies to consider matters under County jurisdiction in a similar manner. Despite making these findings, the Council believes that precluding all testimony on matters such as the changes to traffic on county roads is inappropriate and unrealistic. For a local planning board to understand the traffic impacts of a development, they have to know what is happening on all roads, including the county highways which usually are the most affected arteries. Experts should not be expected to provide extensive testimony on how they implemented county formulas and regulations, but they have to explain, for example, how the expected trip generation leads to the proposed roadway plan as well as driveway locations and the accompanying impact on site design and layout.

N.J.A.C. 5:97-10.3(b)

COMMENT: COAH should clarify this rule to be clear that the goal of cooperating with developers in granting reasonable variances and waivers is to enable the developer to construct all housing units permitted by right based on the ordinance's density regulations.

RESPONSE: This language remains unchanged from N.J.A.C. 5:93. The Council believes the rule is clear as written, as it says "to construct the affordable housing development," which would include both the market and affordable units if it is an inclusionary development.

N.J.A.C. 5:97-10.4

COMMENT: Any development, residential or commercial (with the exception of schools), that generates one or more units of affordable housing is considered a developer of affordable housing. The Council is suggesting, in inclusionary zoning, that the market rate residential and commercial applications be potentially reviewed and processed differently than the affordable housing portion of the development. How do two separate municipal review procedures (one for the market-rate residential/commercial and one for the affordable housing) occur for one application? The Council has no control over how market rate developments are reviewed on the local level and proposing a separate standard for municipal review of affordable units (that is, a double standard) is in direct conflict with N.J.S.A. 40:55D-1 et seq.

RESPONSE: If the development is an inclusionary development, N.J.A.C. 5:97-10 applies to the entire development, not just the affordable units.

COMMENT: This regulation should not be adopted. The provision of this section to require the municipality to maintain a list of at least six professionals that may prepare studies for a developer, and then require the municipality to rely on the consultant's recommendations and no other reports from its municipal professional consultants when making an approval decision, should be permissive, not a mandatory regulation. This proposed regulation serves as a compensatory benefit to developers, which should not be compulsory on the municipality. Compensatory benefits are established elsewhere in the regulations. The municipal planning or zoning board should establish alternative review procedures to the MLUL, which provides ample statutory guidance to the local boards. This proposed regulation essentially usurps the process of the municipality's statutory power to zone as provided in the MLUL. COAH should not adopt any regulations apparently inconsistent with the statutory provisions of the MLUL. Changes to the MLUL or Fair Housing Act, if necessary, should be enacted by the Legislature and signed into law by the Governor; such changes should not be embedded in the proposed rulemaking of a regulatory agency without jurisdiction over the subject matter.

RESPONSE: This provision remains unchanged from N.J.A.C. 5:93. The Council disagrees with the commenter

that its regulations are in violation of the Municipal Land Use Law. The Council's rules are consistent with the mandates of the FHA, which requires municipalities to eliminate unnecessary cost generating features from municipal land use ordinances as a requirement of substantive certification.

COMMENT: Municipalities have retained their experts after thoughtful consideration. It is not appropriate that on a significant application the municipality would not be entitled to rely upon its experts. The commenter urges COAH to delete this provision from the final Third Round Rules.

RESPONSE: Municipalities may use their experts in this process as described in the rule. If the developer chooses an expert from the municipally prepared list, the developer and municipality must rely on the municipality's expert's recommendations and no other reports can be prepared. If the developer prepares its own study, the municipality may use its own expert to evaluate it, but may not pass that cost onto the developer.

COMMENT: If the developer chooses the first option (to prepare the study), must the municipality fund review of the report? Most municipalities require escrow for review of land use applications but the proposed rules allow different treatment for affordable housing applications.

RESPONSE: If the municipality wishes to review the findings of the consultant report that was done and paid for by the developer (the first option), then the municipality must pay for that review. The alternative is to have the developer choose a consultant from a list of six consultants prepared by the municipality so that no subsequent review would be required to be done by a consultant of the municipality, therefore not requiring the developer to pay for that review. If the developer chooses a consultant from the municipally prepared list, the developer and municipality must rely on the consultant's recommendations and no other reports shall be prepared.

N.J.A.C. 5:97-10.4(a)

COMMENT: The rule directs municipalities not to charge for review of fiscal, traffic and environmental studies of proposed inclusionary developments. Municipalities rarely exercise this option for such studies of non-inclusionary developments; they do so only if they have serious question as to the conclusions of the studies submitted by the developer. However, municipalities do charge, as allowed under the Municipal Land Use Law, for in-house review of the project planning (by the municipal planner) and engineering (by the municipal engineer). The commenter trust that this section will not bar municipalities from continuing to charge for this non-special review (unless the municipality establishes such waiver as an "additional incentive" under N.J.A.C. 5:94-6.4(b)4i).

RESPONSE: The commenter is correct. The municipality may charge the developer for non-special reviews related to the regular project planning, unless a waiver is provided as an additional incentive.

COMMENT: The commenter understands the reluctance of COAH to allow any municipality to restrict affordable housing development from fiscal or traffic impacts; however, environmental impacts are often significant when proposals for development are made on constrained lands, often reducing the overall density of a tract. Environmental resource protection must be given equal standing with affordable housing production.

RESPONSE: The rule allows for environmental studies to be used to foster proper design of the development.

COMMENT: The "may not be excessive" standard is vague at best. Municipalities work with each developer to equitably determine pro-rata fair share contributions for off tract infrastructure on a continuing basis.

RESPONSE: If a developer requests relief from the Council regarding excessive off-tract improvements, the Council will review it on a case-by-case basis to determine if it is excessive. The municipality will be afforded the opportunity to provide its basis for the improvement costs.

COMMENT: Overarching and universally applied density and zoning requirements undermine the municipal and

regional planning process. The policy should require that all studies be used in adjusting the permit density, not prohibit these studies from being used. There is no scientific defensibility held by the Council's zoning and density requirements that any other outside study would not also have. All science and data must be compiled for the greatest understanding of each town's situation.

RESPONSE: This language remains unchanged from N.J.A.C. 5:93. The Council does not believe this change is necessary because the Council is not aware of difficulty in implementing these rules in the past. The commenter should note that this section refers to sites included by municipalities in their Housing Elements and Fair Share Plans to address their constitutional affordable housing obligation. Therefore, these affordable housing developments have proceeded through a public process both at the adoption of the Housing Element and Fair Share Plan and also at the ordinance adoption process. The focus of municipal development application review is not whether the site is properly zoned. The focus should be whether the design of the affordable housing development is consistent with the municipal zoning, subdivision and site plan ordinances. As a result, the Council has determined that any special studies that the municipality requests must not be used to alter the permitted density, unless as part of a use variance application pursuant to N.J.S.A. 40:55D-70d(4) or 70d(5). In addition, once the municipality has received substantive certification from the Council, it must adopt its zoning ordinances pursuant to the FHA.

N.J.A.C. 5:97-10.5

COMMENT: The rule permits that a developer appeals to COAH rather than court "if the municipality and developer cannot agree on specific standards that apply to an affordable housing site." The developer may request COAH to appoint a mediator to resolve the disagreement . Mediation shall not require a transfer to OAL. The provision inserts COAH into the municipal land use process.

RESPONSE: This provision remains unchanged from N.J.A.C. 5:93. Referrals to the Office of Administrative Law are for contested issues of material fact. Proceeding before the Office of Administrative Law may be lengthy and the Council has had past success with mediating disagreements between municipalities and developers. The Council's review and mediation process has always been, and will continue to be, an impartial process.

COMMENT: The remedies provided by the proposed rules for developers or property owners who seek to construct affordable housing in accordance with COAH approved fair share plans are too slow and cumbersome to effectively resolve real issues that arise during the course of local site plan and subdivision review. In addition to the options of mediation and a motion for an administrative order, the rule should provide for an alternative dispute resolution procedure. Specifically, COAH should create the position of a Compliance Officer and maintain a list of qualified outside professionals that can serve in this capacity. The purpose of the Compliance Officer is to address site specific issues that come up after substantive certification. The procedural rules should allow any inclusionary developer to ask the Compliance Officer to review the municipal zoning and development requirements that are limiting the development of the site for affordable housing. The Compliance Officer, whose fee and expenses would be equally shared by the developer and the municipality, would conduct proceedings on an expedited basis. He or she may receive written submissions, informal oral presentations, or receive oral testimony. He or she would then make written findings. If either the developer or the municipality do not accept the Compliance Officer's findings, either party should be able to file a motion with COAH to appeal the Compliance Officer's findings in the same way that a municipal zoning officer's decisions can be appealed to a zoning board.

RESPONSE: The Council believes that it is premature to consider such an approach and it is not clear at this time whether such a position will be necessary. Such issues have historically been addressed satisfactorily through the motion process. However, the Council appreciates the commenter's suggestion and will consider the feasibility of such an approach in the future once substantive certification has been granted and if it appears that there is a need for such a position.

N.J.A.C. 5:97-10.5(a)

COMMENT: What relief would the Council provide? It should be the municipality's responsibility to determine and approve a site for a specific development. Most applications are debated for such a long period of time because on many occasions the applicant does not submit sufficient materials. There should be relief available to municipalities coerced by developers, not for towns acting in the best interest of their residents by carefully reviewing an application.

RESPONSE: The relief is granted on a case-by-case basis by the Council based on the facts presented. The commenter should note that this section refers to sites included by municipalities in their Housing Elements and Fair Share Plans to address their constitutional affordable housing

N.J.A.C. 5:97-10.5(c)

COMMENT: The commenter does not believe that there are any cost generating requirements that actually exist. By stating that excessive open space could be cost-generating, these rules inappropriately pit a town's quality of life against its required affordable housing projections, thereby creating an imbalance. There are absolutely no considerations that should be utilized in allowing a developer or the Council to expedite the review process.

RESPONSE: It has been the Council's experience that municipalities may impose cost generating requirements on an inclusionary development. The Council is mandated by the FHA to ensure that municipal ordinances do not contain unnecessary cost generating features. This section is necessary to prohibit municipalities from using the plan review process to stall development and to discourage developers of affordable housing. The Council believes that unless there are assurances that the review of these projects is permitted to move forward in an expeditious manner, the cost of affordable housing will be unnecessarily increased.

N.J.A.C. 5:97 Appendix A

COMMENT: COAH claims that 22,980 units will be required to deliver the prior round affordable housing obligation. It has provided no explanation of where this number comes from. In response to an OPRA request by the commenter, the only responsive document provided was a chart prepared by COAH staff in 2004 showing 9,364 "Not Completed Affordable Units in Inclusionary Developments since 1987." In order for the 22,980-unit number to be accurate based on this analysis, COAH would have to make two unreasonable assumptions: (1) that the average set-aside of the remaining developments was 9,364/22,980, or over 40 percent. There are almost no inclusionary developments in New Jersey with such a high set-aside; COAH's second round rules generally require a 15 to 20 percent set-aside depending on density--this alone would double the required units; (2) that these "not completed units in inclusionary developments" represent all of the units to be constructed to deliver the prior round obligation. It appears that this analysis only includes municipalities who have submitted COAH plans during the First and Second Round; many other municipalities coming into the COAH process for the first time will have to construct inclusionary developments to satisfy their prior round obligation, thus increasing the number of units required to deliver the prior round obligation substantially. Therefore, the number of units required to deliver the prior round obligation is easily more than 50,000, and COAH's assumption that the growth it projects will be sufficient to deliver the Third Round obligation at the proposed growth share ratios cannot be supported. Please respond in detail to this argument, including references to relevant data.

RESPONSE: The Council relied upon data municipal monitoring data from 2004 demonstrating that 9,364 units of affordable housing will be constructed to address the 1987 through 1999 prior round obligation. The Council assumed that approximately 80 percent of those units will come to fruition during the 10-year certification period. Using a 20 percent inclusionary rate, a total of 22,980 units will be necessary to support the prior round affordable housing obligation. In a future amendment to the regulations, the Council will reduce the percentage from 80 percent to 60 percent in recognition that the longer that time passes where the sites do not get developed, the higher the likelihood that the municipality will have to amend their plan to include a different mechanism to address the need. The reason this may happen is that COAH has stricter review criteria that will ensure the realistic opportunity that housing will be created on a given site. For example, COAH relies on DEP's regulations for site suitability and over the past year DEP

has proposed a number of regulations which will make it more difficult to develop. When a municipality petitions COAH to address its cumulative obligation, the Council will determine whether the sites still create a realistic opportunity for affordable housing and if they do not, the municipality may no longer keep the site it its plan as a mechanism to address its affordable housing obligation.

COMMENT: Appendix A must define the COAH "housing regions" and which counties are in which counties, and the basis for that determination, if only to copy the CUPR-prepared rationale from 2004.

RESPONSE: The COAH regions are defined on page 5 of Appendix A.

COMMENT: COAH has eliminated 24,350 units of housing need because it assumes that 17 percent of all low- and moderate-income households Statewide are owner households with either paid off mortgages or housing costs below 38 percent. Even if this is true of all low- and moderate-income households, it is inappropriate to deduct this percentage from the need figure for two reasons: (1) the need does not encompass all low- and moderate-income households in the state but rather just new households being formed, and most new households being formed will not pay down their mortgages within a 19-year period even if they buy a home; (2) the 38 percent cutoff is unreasonable given that households at this rate are considered cost-burdened by the U.S. Department of Housing and Urban Development and thus households in need of more affordable housing--not households whose needs have been met.

RESPONSE: This aspect of the methodology remains unchanged. Under the methodology, future households that will qualify for affordable housing by income but are likely to have significant assets in the form of owned property that is both fully paid off and affordable at just under 40 percent (38 percent) are eliminated from growth share. Households are eliminated if they will own a house whose value exceeds the maximum allowable value under COAH's standards by region and it will be affordable to them at 38 percent of income. More than 38 percent of income for housing expenses, including principal, interest, taxes, insurance, maintenance, and community association fees, is deemed as prohibitive in terms of mortgage acquisition. This eliminates from the county those households that will have paid-down assets in the form of owned property in which they will both live and be able to afford. This reflects the reality that a share of those who qualify by income in the future will have paid off property that they can afford and will not need affordable housing provided to them.

COMMENT: The Appellate Division upheld COAH's failure to reallocate present need, but only did so conditioned on COAH adopting a constitutional growth share methodology. For reasons detailed elsewhere in these comments, COAH has failed to follow the criteria outlined by the court: (1) it has failed to show that there is sufficient vacant land in growth areas to meet housing need, and (2) significant doubt remains given the regulations on use of the housing and employment projections as to whether municipalities can decide for themselves whether to grow. Thus, COAH should include reallocated present need as part of the Third Round methodology.

RESPONSE: The Council believes its methodology is constitutional and in keeping with the 2007 Appellate Division decision. Based on the consultants' analysis, there is 1.03 million acres of undeveloped and unconstrained land that is available for development, or 2.6 times the amount necessary to address the need. This does not include the fact that redevelopment will be used to address a portion of the need. The Council believes that its rules are clear that a municipality must zone or otherwise plan for its projection.

COMMENT: Page 7 of Appendix A notes that "residents living in 'other' non institutional group quarters are included in this methodology." It appears that individuals living in emergency shelters or estimated to be homeless and not in group shelters are included. The table on page 8 indicates that this results in an additional affordable housing demand (1999-2018) of 8,812 units Statewide, and 2,754 in COAH Region 1. The commenter questions the logic of including this population in the estimate of need since transitional housing is the more appropriate solution for this segment of the population. It is unlikely that a resident can move from an emergency shelter to a low or moderate income rental or sale unit without first occupying a more transitional housing unit. In short, the inclusion of this group inflates the Statewide need.

RESPONSE: Only residents living in "other" non-institutional group quarters - those not living in correctional facilities, nursing homes, mental hospitals, juvenile facilities, college dormitories, or military quarters - are included in this methodology. (The 1990 Census further highlights individuals living in emergency shelters or on the street; the 2000 Census considers these individuals to be living in "other" non-institutional group quarters. To make the two years' numbers compatible, individuals living in emergency shelters or on the street are added to those in "other" group quarters in 1990.)

COMMENT: Rehabilitation obligations have increased substantially from the 2004 version of the Third Round Rules -- for example, Rehabilitation Share in Camden increased from 505 to 1,229 and in Newark from 2,525 to 4,634. Yet COAH has still failed to reallocate present need, even though one of its key defenses for failing to do so in 2004 and before the Appellate Division was that rehab obligations were not increasing for cities. Given the increased rehab obligations, which far exceed those in prior rounds once reallocated present need was incorporated into the methodology, the failure to reallocate present need is inexcusable and violates *Mount Laurel II's* precept that no city should be stuck with a disproportionately large share of present need. How does COAH reconcile two plainly divergent positions and why does it maintain, if it does, that not having reallocated need is lawful under the Appellate Division's decision?

RESPONSE: As the Court noted in *In Re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. den.*, 192 *N.J.* 71 (2007), "The FHA does not expressly require COAH to reallocate the excess present need existing in poor urban municipalities. . . Reallocating present need from inner cities to other municipalities is fundamentally inconsistent with a constitutional growth share methodology; it suggests that the excess need in inner cities must be specifically reassigned to other municipalities. We disagree with appellants that eliminating reallocated present need unfairly burdens inner cities. If most of the new jobs and new housing in the State do not occur in distressed inner cities, then affirmatively marketing the housing that does become available in suburban growth areas will not require cities to tax their limited sources by providing affordable housing. If, on the other hand, job growth and new housing development does take place in the inner cities, then those municipalities will have greater resources to meet the needs of the poor." *Id.* at *57-60*.

COMMENT: Appendix A must be a freestanding, self-contained document without any references to the 2004 version of Appendix A or the work for COAH of the Center for Urban Policy Research, as the 2004 Version of Appendix A will disappear from the New Jersey Administrative Code, and "cease to be" as Monty Python describes a dead parrot, upon its repeal as proposed by COAH in this rulemaking.

RESPONSE: N.J.A.C. 5:94 and 5:95 will not be repealed. The rules will remain in place for municipalities that received substantive certification prior to January 25, 2007.

COMMENT: The Growth Share Methodology should be adjusted to be consistent with the State Plan. The proposed rules rely on growth projections that are unrealistic and significantly greater than what was included in the 2001 State Plan. The State Plan only anticipated a total of 3,487,608 households by 2018, approximately 205,770 units (45 percent) less than what was envisioned by Econsult in the proposed rules. Therefore, using the projected growth in households from the State Plan net housing change from 1999 to 2018 would be only 182,416 units (allowing for a 5.4 percent vacancy rate in 2018 total housing units as per the growth share methodology). Based on the State Plan, the Total Prospective Need from 1999-2018 should only be 53,777 units, much lower than the 115,666 units envisioned in the proposed rules. The establishment by the consultants of the housing units for 2018 is derived through a method which is not adequately explained in the appendices, and relies upon a great deal of extrapolation. COAH is charged by the statute with using the State Plan as a means to project growth, and the Court directed the same. Case law also advises that methodologies for providing Fair Share should not engage in too much extrapolation, and should be based upon the best available information. In this case, COAH should have relied upon State Plan projections, and not extrapolations and net opinions of the consultant. The need, as established by the consultants is in excess of the need established by the adopted State Plan. As a result, the growth share ratios created are excessive and burdensome.

RESPONSE: The State Development and Redevelopment Plan was last updated in 2001. A more recent version of the SDRP is not anticipated to be adopted until the end of 2008. The Council elected to use household and employment projections from the N.J. Department of Labor and Workforce Development, released in May 2006. Further, the FHA does not mandate the use of the SDRP. Section 307e states "In carrying out the above duties, including, but not limited to, present and prospective need estimations, the Council shall give appropriate weight to pertinent research studies, government reports, decisions of other branches of government, implementation of the State Development and Redevelopment Plan. . .and public comment." The Appellate Division, in its 2007 decision stated, "Prior to implementing a growth share methodology and growth share ratios, COAH must have data from the State Planning Commission or from some other reputable source that the State as whole, and that each region within the State, have sufficient vacant developable land within growth areas to enable the ratios to generate enough housing to meet the need. . .COAH does not know the amount of vacant developable land because the State Planning Commission has not issued that information. Without that basic knowledge, COAH cannot reasonably assume that its growth share methodology will provide a realistic opportunity to meet the statewide and regional need. We conclude that the growth share methodology can be valid only if COAH has data from which it can reasonably conclude that the allocation formula can result in satisfaction of the statewide need." *In the matter of the adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1, 53-54 (App. Div. 2007), *certif. den.*, 192 *N.J.* 71 (2007). While other projections exist, including Metropolitan Planning Organization (MPO) projections and those provided by the SDRP, the population and employment projections provided by the NJDLWD were chosen to provide the county control totals for population and employment for several reasons. First, there is a common methodology for forecasting population and employment for all New Jersey Counties. Methodological and data consistency is the primary concern in choosing a set of projection data that applied uniformly across the state. Since the NJDLWD projection models have built-in connection of population and economic changes, the projection method is not only consistent across geography but across sectors. The NJDLWD approach provides a consistent methodology in its projection of county population and employment by industry (work place based). It is reported in http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi03/method.pdf. NJDLWD developed and compared the merit of four projections models: Economic-Demographic Model; Historical Migration Model; Zero Migration Model; Linear Regression Model. NJDLWD chose the Economic-Demographic Model as the preferred model for the county population and employment projection. In this model, related methods are used. Cohort-survival method is used to project population initially but the projection is adjusted by how future labor demand affects age-specific migration.

COMMENT: The methodology used by COAH in calculating total projected need also allows for an adjustment to projected need based on "Non-Institutional Group Quarters." Group Quarters seems to include population estimates for "correctional facilities" as well as other needs such as the homeless and assisted living facilities. As such, the Growth Share methodology seems to artificially inflate projected housing need based on a hypothetical increase in prison population. The rules estimated the 2000 Group Quarters population at 36,139 contributing to an additional housing need to address Group Quarter demand of 8,812 units Statewide. According to the N.J. Department of Corrections, the prison population in New Jersey in 2000 was approximately 30,000. The Growth Share methodology should be revised to exclude prison population from the calculation of total prospective need.

RESPONSE: Only residents living in "other" non-institutional group quarters - those not living in correctional facilities, nursing homes, mental hospitals, juvenile facilities, college dormitories, or military quarters - are included in this methodology. (The 1990 Census further highlights individuals living in emergency shelters or on the street; the 2000 Census considers these individuals to be living in "other" non-institutional group quarters. To make the two years' numbers compatible, individuals living in emergency shelters or on the street are added to those in "other" group quarters in 1990.)

COMMENT: The proposed Third Round rules cover only the period from 1987 through 2018, and, as noted above will not affect obligations from the First and Second Rounds. A municipality's total fair share will consist of the sum of the Third Round share (rehabilitation share plus growth share) plus any unmet portion of its fair shares from the First

and Second Rounds. Buena did satisfy its affordable housing obligation. If a municipality can demonstrate that it has rehabilitated units since 2000, it shall be given credit for that rehabilitation against its obligation. The Borough fails to see its 37-unit credit against the Borough's future Growth Share or in the rule proposal listing of the Borough's 1987 to 1999 "former obligation."

RESPONSE: The commenter should note that it is not the Council's intent to take away credit for affordable housing activities that were previously granted credit in a second round certified plan. Credits for built units and/or a regional contribution agreement (RCA) included in a second round certified plan will continue to be applied towards a municipality's "prior round obligation." All proposed mechanisms included in a second round certified plan, that have since been completed, will be reviewed to determine credit eligibility pursuant to N.J.A.C. 5:97-4.

COMMENT: COAH does not grant credit to housing units that are occupied by residents using U.S. HUD section 8 vouchers. Yet housing is made affordable to thousands of residents in the State through the Section 8 voucher program. The COAH methodology for calculating the Statewide need for affordable housing should consider the number of Section 8 vouchers that are provided on a Statewide basis.

RESPONSE: The Council grants substantive certification to a municipality's Housing Element and Fair Share Plan. The Council grants credit for a project that include project-based U.S. HUD section 8 vouchers. The Council does not grant credit to portable vouchers because they cannot be identified with a given development in a municipality. There is no way to track whether the unit is set aside for a low or moderate income individual for the period of certification.

COMMENT: Page 8 states that "vacancies in the housing stock available to low and moderate income households also increase the need." There is not support in the document for this assertion. The supporting information needs to be presented for review.

RESPONSE: Vacancies in the housing stock available to low- and moderate-income households also increase the need because they reflect affordable units not being used by (and therefore not meeting the needs of) low- and moderate-income households. To truly accommodate all low- and moderate-income households requires building enough units to house those households, assuming that a certain portion of those units will be vacant.

COMMENT: The commenter finds it very unfair that the proportion for various parts of this State varies drastically from northeast region for example to the east central region. Any growth proportion should be the same for all regions.

RESPONSE: While the methodology shows interim calculations - for household, housing unit, and job growth - broken out by region, the ultimate growth share ratios are the same across the State. Because actual growth (rather than projected growth) will prompt a municipality's affordable housing obligation, all municipalities, regardless of region, will be responsible for developing the same share (relative to growth) of affordable housing.

COMMENT: What other methodologies for allocating need, if any, were considered and rejected by COAH in formulating the Third Round Rules? Why were these alternative methodologies rejected? If none were considered, why is that the case?

RESPONSE: The consultants also estimated affordable housing need using a second approach modeled on the Department of Housing and Urban Development's (HUD) technique for identifying households with housing problems, detailed on page 13. This approach resulted in a need number similar to (although slightly less than) that generated by the Secondary Sources approach. COAH ultimately decided to use the Secondary Source approach so as not to stray from methodologies used in prior years and already approved by the courts.

COMMENT: The commenter's review of the material indicates that the affordable housing need may be inflated. For example, Appendix A, entitled "Growth Share Ratio Methodology," states "given New Jersey's very strong housing market in recent years, it is likely that projections stopping in 2014 would disproportionately capture a relatively slow part of the housing cycle." This appears to be a portion of the rationale behind increasing the Statewide need from

52,726 units (under the prior third round rules) to 115,666 Statewide (under the proposed third round rules). Appendix A states that "each municipality's current round affordable housing obligation is based on actual growth while maintaining zoning based on projections to establish a realistic opportunity for affordable housing." Therefore, the projections are an important component in municipal compliance with COAH.

RESPONSE: This is not correct. As COAH's consultants explained, because housing prices and production vary over long periods of time, with rapid growth in some periods and slow growth in others, extending projections out to 2018 was needed in order to reflect both strong and weak housing markets. Given New Jersey's very strong housing market in recent years, it is likely that that projections stopping in 2014 would disproportionately capture a relatively slow part of the housing cycle.

COMMENT: For the State as a whole, there are 324,813 units projected to deliver the current round, and there are 111,641 units allocated to the six regions. Please note that the table on page 13 of Appendix A shows a Statewide projected need of 115,666 while the sum of the six regions is only 111,641.

RESPONSE: The 115,666 total does not reflect the sum of regional figures but rather a separate calculation for the State as a whole (131,297 - 15,631 = 115,666). This figure differs from the sum of each regional total due to rounding errors.

COMMENT: Page 13 indicates that a HUD modeling of low and moderate income housing need results in a lower need, but does not detail the difference.

RESPONSE: To check the robustness of the approach used in this methodology, the consultants calculated affordable housing need using a second approach modeled on the Department of Housing and Urban Development's (HUD's) technique for identifying households with housing problems (described in further detail on page 13). According to this analysis, 99,146 households in New Jersey had affordable housing needs in 2000 (compared to the 115,666 reached using the Secondary Sources Approach).

COMMENT: There's a severe shortage of affordable housing for low-income people. The commenter commends COAH and DCA for what are clearly improved rules over the ones that were invalidated by the Appellate Division.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: Present need is defined as a portion of substandard housing occupied by low and moderate-income families. Under the Third Round rules, a regional average is calculated which, when applied to the total number of substandard units in a municipality, results in the municipality's rehabilitation share. According to COAH, by using regional averages, urban and inner-ring suburban municipalities' deteriorated housing is allocated to other, more affluent municipalities in the region. This theory simply proves false in practice given that Urban Aid cities, as a general rule, have more substandard housing than more affluent municipalities in the region. As a result, when the regional average is applied, the regional rehabilitation share falls disproportionately upon them.

RESPONSE: The Council does not believe that using the regional number disproportionately burdens one municipality over another. In fact, use of a regional average disproportionately benefits urban municipalities. However, to address the commenter's concern, the rule will be amended in the near future to permit municipalities eligible to receive State aid to seek a waiver from addressing the full rehabilitation share within the 10-year certification period.

COMMENT: An explanation is needed to demonstrate that the use of both housing and employment growth does not result in overestimating the need for affordable housing. For those who both live and work in New Jersey, it appears that both their housing unit and their job contribute to the need calculation, and yet only one person generates the need calculation. This potential for double-counting also exists with multiple person-households where there is more than one wage earner.

RESPONSE: Projected housing unit and employment growth represent the two denominators used in the Growth Share ratios - or the growth that is obligated with providing for the affordable housing need. That affordable housing need is calculated independently of those projected increases. The affordable housing need is a function of projected household growth, adjusted for a variety of factors as described on pages 8 through 13 of Appendix A.

COMMENT: COAH should count cost burdened households as part of its housing need number. The DCA 2007 Consolidated Plan shows that of the 700,000 households earning below 50 percent of the area median income, 77.5 percent, or 542,500, have a housing problem (p. 66) relating either to excessive cost burden (paying more than 30 percent of their income for housing) or living in overcrowded housing. Although COAH numbers for municipal obligations may not fully meet this need, it makes for better policy for COAH to present the real need number. The failure to incorporate cost burdened households into the methodology is error, for two reasons. First, it is palpably arbitrary for an agency charged with *Mount Laurel* compliance to suppress a major source of the need for low and moderate income housing when that need is both calculated and used in all analogous affordable housing programs overseen by COAH's host department, DCA. DCA most recently estimated that the current "need" for low and moderate income is approximately 540,000 units, more than five times the amount estimated by COAH's consultants using Census counts of substandard housing as an artificially limited surrogate for "need." Second, in *In re Warren Twp.*, our Supreme Court made unmistakably clear that COAH's methodology must be internally consistent in order to be valid. It is undisputed that any low or moderate income household is legally entitled to occupy a deed-restricted unit created for Mount Laurel compliance purposes, without having to prove that it would be moving from a dilapidated unit that was counted towards the need for low and moderating income housing. It is manifestly inconsistent with this eligibility standard to underestimate need by 80 percent or more, potentially resulting in the creation of fewer units than could have been the case had a consistent approach to need been taken. The most that can be said for the Appellate Division's opinion on this question is that the panel permitted, but did not require, COAH to adopt a limited definition of need. COAH should use some of the discretion that it so frequently claims to expand the definition to recognize the actual need for affordable housing, including the need of cost-burdened lower income households.

RESPONSE: *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing,* 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied,* 192 N.J. 71 (2007), affirms that the Council is not required to include the cost-burdened poor in the present need equation, and case law supports COAH's decision not to include the cost-burdened poor. The Court stated, "We conclude that the decision by COAH to exclude the cost-burdened poor from the present need or rehabilitation share calculation cannot be considered arbitrary or in contravention of its statutory authority. The Court has repeatedly emphasized the variety of methodologies that can be used to determine need and the multiplicity of ways to address that need and the broad authority bestowed on COAH by the Legislature." *In re Adoption of N.J.A.C. 5:94 and 5:95,* 390 *N.J. Super.* at 36. The Court goes on to say that the *Warren* decision provides that the FHA has vested in COAH the discretion to determine whether identifiable cost-burdened households should be included in the calculation of need. *Id.*

COMMENT: Neither the prior Third Round rules, nor the current proposed rules, provide an explanation for applying the concept of prospective need, under the label of "Growth Share," contrary to First and Second Round methodologies, to Urban Aid cities. COAH should not abandon the principle espoused by the Supreme Court that a fair share methodology should avoid reconcentrations of low- and moderate-income families in these fiscally/economically stressed locations.

RESPONSE: The Growth Share methodology will not disproportionately burden any one municipality. This approach links affordable housing obligation to the development of market-rate housing units or the creation of new jobs. In this way, all municipalities will be responsible for creating the same share (relative to growth) of affordable housing. Pursuant to the Fair Housing Act at N.J.S.A. 52:27D-307, the Council has the responsibility to estimate the present and prospective need for affordable housing. The Council determines the number of units that need to be rehabilitated in the municipality which may be used to address the municipality's present nee. Alternatively, a municipality may conduct a structural conditions survey and use the results of the survey as the determination of the number of units which require rehabilitation. The Council allows municipalities to receive credit for existing units that

meet COAH criteria. Further, the rule will be amended in the near future to permit a 15 percent set-aside for rental developments in workforce housing census tracts, as determined by the U.S. Census Bureau, and to permit an exclusion of the additional market rate rentals in such developments from a municipality's actual growth share, as calculated under N.J.A.C. 5:97-2.5. In addition, the Council will consider future rule amendments to address the affordability average of rentals in urban areas.

COMMENT: Filtering was not properly analyzed by the COAH consultants, and not properly applied in the proposed regulations. The Court had determined that the use of the filtering was acceptable, provided it could be supported by more recent data than originally used. The current consultants changed the approach to filtering in a number of ways. First, they extended the period of consideration from 2014 to 2018, thus requiring new calculations. Second, they changed the definition of a filtered unit as requiring a "substantial" change in pricing and income, but did not define the term "substantial" so that the legitimacy of the calculations could be determined. Third, they evaluated filtering by reviewing deeds, which by their very nature eliminated any consideration of filtered rental units. Even so, the consultants found there would be approximately 47,000 units filtering down to low and moderate income levels. COAH then arbitrarily reduced the calculation to 23,626 units, which drove the need calculation over 100,000 units. The artificial reduction of filtered units increases the net Statewide need and causes the growth share ratios to become more aggressive and unsustainable economically. COAH needs to either reconsider the filtering in accordance with the direction of the report, and consistent with the prior methodology, and/or recognize there is a limit to the number of affordable housing units developers and municipalities can provide economically without massive subsidy from the State.

RESPONSE: The formula is a multinomial logit, which enjoys widespread application in generating forecasts of event probabilities and is commonly taught in mid-level statistics courses everywhere. The model is estimated via a regression that computes the correlation between the direction of a unit's filtering and the enumerated factors affecting this direction. For example, a multinominal logit regression would be appropriate when trying to determine what factors predict which major college students choose to pursue.

COMMENT: The revised third-round COAH rule promises significant relief from New Jersey's severe shortage of affordable housing. Perhaps most important, COAH's new estimate of the Statewide need will help New Jersey to increase the stock of affordable housing that is created through private development and redevelopment. This estimate is based on more current data and more reasonable assumptions than were reflected in prior versions of the rule. Moreover, the rule would dedicate increased funding toward low-income housing.

RESPONSE: The Council appreciated the commenter's support.

COMMENT: COAH is using a projection period that is inherently unreliable; indeed, New Jersey's current housing market is unrecognizable as compared to just 12 months ago. It is unconstitutional to use a fair share methodology that projects future affordable housing need using a time period so long as to be inherently reliable, and then impose the resulting projections on municipalities to "remedy" future, assumed exclusionary zoning.

RESPONSE: The Council recognizes that projections are bound to vary from actual trends. Using the best available data from a longer time period, however, makes its projections more reliable. In addition, extending its projections out to 2018 means the Third Round will include both strong and weak housing markets (due to the cyclical nature of real estate market strength), or periods of rapid growth and periods of slow growth. And while municipalities are obligated to zone for affordable housing based on these projections, their actual obligation (what must be built in each municipality) will depend not on the projections but rather on actual growth in housing units and employment.

COMMENT: The report entitled "Vacant Land and Buildout Capacity by Municipality as of 2002" uses inaccurate data. The "Public Domain Acres" is not defined and is not up-to-date. Several municipalities state that a review of municipal tax map data shows there are more acres than reported by COAH's consultant of publicly owned land in their municipalities.

RESPONSE: Although COAH's consultants used the DEP 2002 Land Use/Land Cover data, it used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP) and the Highlands Council. This included data on farmland preservation and purchases of open space by State, county, municipal and non-profit organizations made available to the Office of Smart Growth through the 2007.

COMMENT: Overall, the projected need, after subtracting secondary sources, is an average of 5,783 units per year over the Third Round period of 1999-2018, as compared to an average of 7,163 units per year over the First and Second Round periods of 1987-1999 (when the revised First Round numbers and Second Round numbers both promulgated in 1993 and reproposed here in Appendix C are combined). Please explain what factors make it believe that affordable housing need is lower than in prior rounds.

RESPONSE: Appendix A, Growth Share Methodology, sets forth the methodology used to determine the growth share ratios and the regional affordable housing need for the period 1999 to 2001. The housing ratio was determined by using 60 percent of New Jersey's projected affordable housing need, adjusted by secondary sources, as the numerator which was divided by the projected housing unit growth for 2004 - 2018. The projected housing unit growth includes the expected increase in units over the prescribed period of time. Units required to deliver prior round obligations are subtracted from the total projected housing growth. The Council believes that the growth share ratio for both housing and employment growth accurately and effectively address the need for affordable housing within the state for the period of time 1999 - 2018. The numerator in both of these ratios sums to New Jersey's projected affordable housing need. This total is calculated based on an estimate of future housing need as a percentage of future housing overall growth, as was done in the previously adopted Third Round Substantive Rules. The Council's consultants used the most recent and best data available and estimated that future need will grow as it has in the past. This assumes that in the period for which the Council is projecting need (between 1999 and 2018), low- and moderate-income households (those with incomes below 80 percent of their regional medians) represent the same percentage of all households as they do in 2000 (according to the 2000 U.S. Census 5-Percent Public Use Microdata Sample (PUMS)). Low- and moderate-income owners with significant assets - those who have paid off their mortgages and spend less than 38% of their income on other housing costs - are removed from this total, and low- and moderate-income residents of non-institutional group quarters are added to this total, to reach a "Total Projected Need (1999-2018)" of 131,297 households. Some of these households are accommodated by supply responses including "Secondary Sources of Supply." These adjustments to the composition and value of the housing stock include filtering and residential conversions (which can decrease the demand for affordable housing) and demolitions (which can increase the demand for affordable housing). In all, these Secondary Sources of Supply are expected to reduce New Jersey's projected affordable housing need by 15,631 units, or from 131,297 to 115,666. This numerator (115,666) is then divided by two denominators - projected housing unit growth from 2004 to 2018 and projected employment growth from 2004 to 2018 - to create two Growth Share Ratios, one for housing and one for employment. Projected housing unit growth incorporates the expected increase in units over this time period as well as the predicted number of replacement units required. Also, units required to deliver prior round obligations are subtracted from this total, resulting in a statewide figure for housing unit growth of 324,813. Projected job growth is simply based on the difference between Econsult's estimates for 2004 and 2018 employment, or 722,886.

COMMENT: The new growth share ratios are a definite step in the right direction to provide more units of affordable housing.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The methodology does not account for two unit types in calculating the number of units available to deliver housing for the third round. The number of units necessary to deliver the prior round obligations (22,980) accounts for only the prior round affordable units that have not yet been constructed. It does not account for the market rate units associated with these prior round affordable units in inclusionary developments.

RESPONSE: The commenter is incorrect. The 22,980 units represents market-rate units that are part of prior round inclusionary developments that are constructed after January 1, 2004.

COMMENT: It is imperative that COAH conclude that only a portion of the Statewide affordable housing need should be provided during the third round. It appears clear that 115,566 affordable units is an unachievable goal for the third round. For some communities, longer planning cycles and a phase-in schedule beyond 2018 will be necessary, so that affordable housing can be responsibly absorbed. Moreover, to adopt the proposed rules which seek to satisfy the 115,566 unit need will hamper economic development by slowing residential and non-residential growth. This cost to municipalities, since much of the obligation will have to be funded by the municipality, will result in a huge burden to the tax payers. It is disingenuous to suggest that limited State funds available for affordable housing will prevent the burden from being shifted to the tax payers.

RESPONSE: Municipalities are required to submit a Fair Share Plan that creates a realistic opportunity to provide affordable housing during the third round period, through inclusionary zoning or other mechanisms that the municipality may alternatively choose to implement. The Council has also implemented an implementation schedule which allows municipalities to phase implementation of certain affordable housing mechanisms. The implementation schedule provided by N.J.A.C. 5:97-3.2(a)4 must include a detailed timetable for units to be provided within the period of certification and must demonstrate a realistic opportunity as defined under N.J.A.C. 5:97-1.4. The commenter should note that the requirement to construct the affordable housing is based on the actual residential and non-residential growth that takes place in the municipality during the period 1999 to 2018. While the original Round Three rules covered the period through 2014, the projection period for the revised third round has been extended to 2018 so that the period could reflect an entire housing cycle. Because housing prices and production vary over long periods of time with rapid growth in some periods and slow growth in others, the research team determined that the period should be extended so that that the projection would reflect both strong and weak times in the housing market. Given the very strong housing market in New Jersey until recently, it is likely that a projection period that stopped in 2014 would have disproportionately captured a relatively slow part of the housing cycle, given the proposed rules focus on the period 2004-2018.

COMMENT: The methodology utilized to determine projected needs eliminate spontaneous rehabilitation without justification, resulting in an overall higher projection that needs to be accommodated.

RESPONSE: The decision was appropriate because while some units were likely brought up to code ("spontaneously rehabilitated") over the course of the study period, others likely fell out of compliance. The consultants used the best available data, which does not specify the number of properties doing either one. In addition, spontaneous rehabilitations are expected to be captured in the updated filtering numbers.

COMMENT: The methodology fails to account for the number of jobs that take place without growth in commercial space. Home health aides aren't based in commercial space. Increases in non-residential space don't account for the increase in home health aides which is an exponential increase. Also, we have a predominant of low-wage work in New Jersey. Half of all the jobs, nongovernment jobs, pay about $ 16.00 or less, which is less than the real cost of living in our State which is why we have people with cost burden, credit problems.

RESPONSE: The ratios derived from the survey conducted by the Reed Group account for home-based health care jobs. Respondents are asked how many employees are associated with their particular location, and separately if any of those employees work off-site. Thus, the number of employees that is assigned to that response is inclusive of jobs that are not physically stationed at that location, including home-based health care jobs.

COMMENT: Page 95 - Residential conversions: the estimate that only 19.5 percent of converted units are priced for low and moderate income households (since 19.5 percent of New Jersey's housing stock was affordable to these households in 2000) seems inaccurate, given the definition of residential conversions as occurring when renovations increase the number of units in existing structures. No one is subdividing million-dollar homes to yield two $ 500,000

units. It seems more likely that a much higher percentage of such conversions result in affordable units - typically accessory apartments. However, the same percentage is used for demolitions, where it is probably equally inaccurate (affordable, low-value housing is more likely to be demolished, to be replaced by higher-cost housing); so these inaccuracies largely balance each other. The consultants should justify these percentages.

RESPONSE: This is the best methodology for estimating affordable housing portions. According to the National Association of Realtors' mortgage calculator - and assuming households could put up to $ 10,000 toward their down-payment, had the State's average car payment ($ 447.00, reported by Edmunds Automotive Network) and credit card debt ($ 165.00, reported by PlasticEconomy.com), took out a loan at 6.375 percent (roughly the average commitment rate for 30-year, fixed rate loans in 2006 and 2007, according to Freddie Mac), and faced a 2.5 percent property tax rate (slightly below the average effective property tax rate for all New Jersey municipalities in 2004, reported by the New Jersey Division of Taxation) - a household earning $ 52,276 (the State median in 2000) could afford a $ 109,547 home. U.S. Census data from 2000 indicates that 19.5 percent of specified owner-occupied units were valued below $ 109,547. This methodology estimates that 19.5 percent of converted and demolished units were priced for low- and moderate-income households (since 19.5 percent of New Jersey's housing stock was affordable to these households in 2000).

COMMENT: Page 17 of Appendix A establishes a 60/40 split for residential and non-residential growth share obligation but does not give the basis for this split. Moreover, the one affordable among five units and one unit for every 16 jobs is also not explained or detailed by backup information.

RESPONSE: According to the DEP's 2002 Land Use/Land Cover (LU/LC) data, approximately 67.5 percent of the total developed land in the State is residential. These past trends suggest placing a greater affordable housing obligation on new residential development as opposed to commercial development. In the previously released Third Round rules, it was assumed that just under half (48.5 percent) of affordable housing need would be accommodated by new housing units and just over half (51.5 percent) by new jobs. To reflect DEP's findings and in an effort to be cautious about over-burdening jobs and therefore hampering economic development, the consultants concluded that it was necessary to update this split - with roughly 60 percent of need accommodated by housing growth and approximately 40 percent by job growth. To maintain the initially published Growth Share Ratios, and thus retain predictability and certainty for participants in COAH's process, and to reduce the difference between affordable housing units generated using the actual versus rounded Growth Share Ratio figures, the consultants adjusted this split slightly after updating housing and employment projection numbers. (Adjusting the split to 57 percent/43 percent cut the rounding error in half.)

COMMENT: The projections used by COAH's consultant in its report to establish the growth share obligations for the period through 2018 of new housing units and new employment are flawed in that the historical statistics used to determine these projections in January, 2008 (the date of this Report) actually end in 2005, and do not factor in the recent economic conditions in our communities and in the State in general, where new housing starts (and not demolitions and replacements,) have in fact declined over the last several years (and in many communities are presently non-existent,) and that there has been an actual job loss throughout the State over this recent period.

RESPONSE: The methodology will be updated in a rule amendment in the near future to calculate historic growth rates through 2006. The municipal-level housing data will be updated through 2006 using certificate of occupancy information and information on demolitions, and employment data will be updated using 2006 data from the New Jersey Department of Labor and Workforce Development. The updated methodology will include new growth rates for the 1993-2006 period based on the updated data, and recalculated the S-curves for each COAH region for both housing and employment. The commenter should note that these growth projections are long-term projections, and they may run counter to short-term growth trends experienced by a municipality.

COMMENT: Our review of COAH's consultant reports, contained in COAH's Appendices A and C, indicates that the estimates of affordable housing need is inflated. For example, Appendix A, entitled "Growth Share Ratio Methodology," states "given New Jersey's very strong housing market in recent years, it is likely that projections

stopping in 2014 would disproportionately capture a relatively slow part of the housing cycle." This appears to at least partly explain the rationale behind increasing the statewide need from 52,726 units (under the prior third round rules) to 115,666 Statewide (under the proposed third round rules). Appendix A states that "each municipality's current round affordable housing obligation is based on actual growth while maintaining zoning based on projections to establish a realistic opportunity for affordable housing." These projections, an important component in municipal compliance with COAH, appear inflated, as detailed elsewhere in this report.

RESPONSE: The consultants felt that, because housing prices and production vary over long periods of time, with rapid growth in some periods and slow growth in others, extending projections out to 2018 makes sense in order to reflect both strong and weak housing markets. Given New Jersey's very strong housing market in recent years, it is likely that that projections stopping in 2014 would disproportionately capture a relatively slow part of the housing cycle.

COMMENT: COAH has estimated a total need Statewide of 115,666 units. Yet its growth projections, once the 1:5 homes and 1:16 jobs ratios are applied, only produce approximately 102,000 affordable units. Thus, COAH has failed to allocate the entire need in violation of the Fair Housing Act and *Mount Laurel*.

RESPONSE: Reaching roughly 102,000 affordable units reflects both a calculation error and a rounding error. First, for the Growth Share Ratio for housing, the consultants used total projected housing unit growth (324,813) as the denominator. Second, the actual Growth Share Ratios calculated for housing units and for employment were both rounded to reach whole numbers. According to the consultants' analysis, the actual Growth Share Ratio for housing is 4.68 (rounded to five) and for employment is 15.62 (rounded to 16). Applying the actual (non-rounded) ratios to projected housing unit and employment growth results in the development of 115,666 affordable housing units. Applying the rounded ratios to projected housing unit and employment growth results in the development of just 110,143 affordable housing units.

COMMENT: We have a sophisticated Geographic Information System (GIS) with 20 separate data layers that are parcel based on State plane coordinates. We reserve the right to petition COAH for a vacant land adjustment to disprove COAH's consultants' figure of "Total Vacant Land" while preparing a revised Housing Element and Fair Share Plan and correct the number of affordable housing units that we are obligated to address in the planning process.

RESPONSE: Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred and accurate data in the future. However, it is important to factor in that COAH's growth estimates for the period 2004-2018 begin with the utilization of land use capacity estimates as of 2002, the most recent estimates available. Actual and planned development since 2002 and 2004 will account for some portion of the growth that COAH estimated would occur out to 2018. It is also important to note that the growth share obligation is based on certificates of occupancy issued since January 1, 2004. This is important to consider when comparing current (2008) land availability and development capacity to COAH estimates that start in 2002 or 2004.

COMMENT: Page 95 states "Half (50 percent) of these filtered units (23,626 units) are located in suburban communities . . . This suburban share of filtering is included in this analysis." Why is only this suburban half included in the analysis? Filtered units in urban and rural communities also provide housing for low and moderate income families.

RESPONSE: The Council elected to only use that component of filtering that would be occurring in suburban locations in the future, recognizing that the *Mount Laurel* decisions were a response to exclusionary zoning in suburban locations. While it is important to continue to promote affordable housing opportunities throughout the State, including in urban areas, the Council also recognizes the need to take into account affordable housing opportunities occurring

through filtering in non-urban areas. As a result, the Council made the policy decision to focus its use of filtering as a secondary source of supply on the filtering that occurs in suburban areas. As an aside, it is important to remember that urban filtering continues to provide affordable housing opportunities. The data also supports an increased reliance on suburban locations for filtering, although it is recognized that urban areas will also have a share of filtering in the future.

COMMENT: The LU/LC Spatial File of 2002 is outdated and does not properly represent the development activity that has either been completed since 2002, under construction, or that may have received land use approvals. In addition, large amounts of public and private open space and preserved farmland that have been acquired since 2002 were included as vacant land.

RESPONSE: Although COAH's consultants used the DEP 2002 Land Use/Land Cover data, it used the most currently available statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP) and the Highlands Council. This included data on farmland preservation and purchases of open space by State, county, municipal and non-profit organizations made available to the Office of Smart Growth through the 2007. Because the critical LU/LC component is based on 2002 conditions COAH's vacant land analysis is reported as of 2002. As such, planned and actual development between 2002 and 2008 may have used up some portion of these lands. Similarly, COAH's growth estimates for the period 2004-2018 begin with the utilization of land use capacity estimates as of 2002, the most recent available. Here again, actual and planned development since 2002 and 2004 may account for some portion of the growth that COAH estimated would occur out to 2018. It is also important to note that the growth share obligation is based on certificates of occupancy issued since January 1, 2004. This is important to consider when comparing current (2008) land availability and development capacity to COAH estimates that start in 2002 or 2004.

COMMENT: All of the programs of the Housing and Mortgage Finance Agency should be considered as secondary sources of supply. HMFA housing efforts should not be considered as irrelevant to the need for affordable housing. HMFA should be relied upon as a source for providing affordable housing, with municipalities and developers being required to only provide the balance of the need. The present proposal eliminates all publicly funded housing as a secondary source of supply, thus unreasonably increasing the obligation which must be satisfied by municipalities and developers alike. Tax credit housing was eliminated as a secondary source of supply, because COAH believed there was a double counting in that it reduced Statewide need, and was used by municipalities to satisfy the individual obligation. However, in the prior adopted growth share regulations only those projected tax credit units from nonparticipating municipalities were considered as secondary sources of supply, and there was no double counting. Moreover, many of the HMFA programs create mortgage based restrictions on affordability, and are not considered by COAH as affordable housing because they are not deed restricted. Whether deed restricted or mortgage restricted, all affordable housing programs of the State should serve as secondary sources of supply. It is also important to preserve the ability for municipalities which complied through municipally sponsored projects to retain their right to credits from those projects.

RESPONSE: COAH reviewed data describing the number of housing units allocated between 1987 and 1999 through the Federal Low Income Housing Tax Credit (LIHTC) program and the State's Balanced Housing (BH) Program. Of these, 7,853 units were built but never credited toward any municipal affordable housing plan. In a future rule amendment, COAH will include this information in Appendix C and state that it will not provide credit for these units to individual municipalities but will instead credit the total updated Statewide need of 93,813, to reach an updated prior round need number of 85,960 (93,813 - 7,853 = 85,960), nearly the same as that published in 1993. The Council has elected to continue to credit units that were already included in second round fair share plans at the municipal level and to also credit at the municipal level units created through these programs from 1999 onward. The Council believes that this policy of granting credit at the municipal level rather than as a secondary source of supply will encourage municipalities to participate in the COAH process and to participate in these State-funded programs to create affordable housing opportunities.

N.J.A.C. 5:97 Appendix B

COMMENT: Why was "spontaneous rehabilitation" removed from the calculation? Due to the recent aggressive housing cycle, many older homes were updated, which removed existing code violations. Spontaneous rehabilitation will continue and should be used as an adjustment factor. Given the definitions of units in need of rehabilitation (pre-1950 construction, overcrowded; lacking a kitchen; lacking indoor plumbing), it is not likely that many fell out of compliance - buildings constructed since 1950 do not become pre-1950, and it is not likely that anyone removes a kitchen or indoor plumbing where they exist. Municipalities should be able to credit "spontaneously" rehabilitated units if they can document the rehabilitation and show that they remain occupied by low or moderate income households.

RESPONSE: This information is implicitly included in the revised filtering methodology and, therefore, there is no separate subtraction for spontaneous rehabilitation.

COMMENT: In general, the number of units considered to be overcrowded significantly exceeds the number that lack complete plumbing and kitchens. However, overcrowding is a condition related to household size, not the physical quality and condition of the structure. The focus of local rehabilitation programs, required per paragraph (b)2, is the "rehabilitation of a major system," not the construction of building additions to cure overcrowding. Therefore, the commenter recommends that units that are considered overcrowded be removed from a municipality's Rehabilitation Share.

RESPONSE: The methodology used to calculate each municipality's rehabilitation share is based on 2000 Census data. The rehabilitation share is based on: 1) the number of overcrowded units built prior to 1950; 2) units that lack complete plumbing; and 3) units that lack kitchen facilities. The result of this calculation is units which may need rehabilitation. The Council believes that these three indices are an appropriate measure of units in need of rehabilitation. The commenter should note that the Council's method of calculating the rehabilitation share was upheld in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007).

COMMENT: What is the basis for any limitation as to the date for overcrowded units? *Mount Laurel II* provided no such limitation in defining the present need for lower income housing to include "housing need generated by present dilapidated and overcrowded units. . ." 92 *N.J.* 158, 243.

RESPONSE: This provision of the Council's methodology was upheld in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007). The Council selected pre-1950 as an appropriate measure of aging housing stock that may be in need of rehabilitation. Researchers felt it was important to include all overcrowded properties that were at least 50 years old in 2000. Fifty years is the cut off for the National Park Service's for eligibility for listing in the National Register of Historic Places.

COMMENT: COAH's methodology of calculating Wyckoff's rehabilitation share is flawed. Wyckoff should have no obligation with regard to the rehabilitation component of its affordable housing obligation. Previous to the proposed Third Round Rules, Wyckoff had no rehabilitation obligation. The figures memorialized in Appendix B provide that Wyckoff has no overcrowded units which were built prior to 1950. However, incredibly, the rules show 21 units within the Township with incomplete plumbing and 43 units within the Township containing incomplete kitchens, for a total rehabilitation obligation of 36 units. The proposed regulations categorize these units as dilapidated housing. The regulations purport to receive their information from the Rutger's Center for Urban Policy Research (CUPR) as reported by the 2000 Census. With all due respect, COAH's data with respect to the Township of Wyckoff, from whatever source with regard to this issue, is inaccurate and completely false. This issue was discussed and researched with the Township's Building and Zoning Departments. No CO's would be issued for residential units or would continue without complete plumbing and kitchen facilities. In recent years, vacant lots and/or starter homes within the Township of Wyckoff have sold for in excess of $ 500,000.00. Clearly, such an investment would not be made without the existence and/or construction of complete plumbing and kitchen facilities. Only three theories seem plausible: 1) COAH's experts erred when obtaining and reviewing the data with regard to dilapidated units; 2) the data used by COAH's experts are flawed; or 3) the assumptions and statistical derivations applied to the data are in error. In any event, the Township of

Wyckoff respectfully requests that COAH re-review such data regarding the rehabilitation share in the Township of Wyckoff since the same is inaccurate.

RESPONSE: COAH confirmed that the figures for Wyckoff are correct (according to the 2000 U.S. Census).

COMMENT: COAH has diluted the most powerful census variable in predicting the condition of the housing stock by not considering the age of the housing stock unless it is also overcrowded.

RESPONSE: This criterion for establishing the rehabilitation share remains unchanged since N.J.A.C. 5:94 that was adopted on December 20, 2004. This portion of the rule was upheld in the case, *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007).

COMMENT: Does data indicate that substandard housing in Urban Aid Cities is more likely to shelter low and moderate income families than similar housing in other municipalities? Assuming the data does so indicate: how many units in each region have been allocated, using this approach, from Urban Aid Cities to more affluent municipalities? Have a number of units been lost as a result of this approach, given that cities such as Elizabeth tend to be more populous than other municipalities? On what basis did COAH conclude that, in the case of Union County, that 78 percent of the County's total present need is fairly allocated to its four Urban Aid Cities? Assuming data does not so indicate, on what basis did COAH determine that by using regional averages, urban and inner-ring suburban municipalities' deteriorated housing is allocated to other, more affluent municipalities in the region?

RESPONSE: The Council relied on the most recent Census data to calculate the rehabilitation share. The Census data does not identify the occupants or income level of those living in substandard housing. Therefore, the Council used a regional analysis of percentage of housing units that qualify as deteriorated. Therefore, it is not possible to determine how Urban Aid municipalities fare relative to other municipalities.

COMMENT: The change to include overcrowded housing units prior to 1950, instead of prior to 1940, is a welcome change somewhat more responsive to the housing needs of New Jersey residents.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: This Appendix B must be a freestanding, self-contained document without any references to the prior work for COAH of the Center for Urban Policy Research, as the 2004 Version of Appendix A, which contained its Rehabilitation Share analysis, will disappear from the New Jersey Administrative Code.

RESPONSE: The previously codified N.J.A.C. 5:94 and 5:95 will remain in affect to address the commenter's concern. All associated appendices will also be retained.

COMMENT: The Third Round Rules initially adopted explain that reallocated need was eliminated, in part, because it "was often sent to . . . developed suburbs [where] obligations could not be met and were eventually reduced through a vacant land adjustment." N.J.A.C. 5:97 Appendix A. In formulating the current Third Round rules, did COAH consider sending present need to undeveloped suburbs, or consider other mechanisms intended to preserve the concept of reallocated present need while ensuring the provision of sufficient affordable housing?

RESPONSE: The Council was upheld on the issue of reallocated present need in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007). The Council did not include new reallocated present need provisions in the rule proposal.

COMMENT: The elimination of spontaneous rehabilitation is a welcome and appropriate change to the rules.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: Our municipality's Rehabilitation Obligation is too high. Under the proposed rules, our municipality

has a 15-unit rehabilitation obligation. This represents a dramatic increase from the previous Round three rules, when we had no rehabilitation obligation, and Round two rules when we had a seven-unit obligation. It is unclear what data changed in the 2000 census data to raise the rehabilitation requirement from zero units to 15.

RESPONSE: The year determining overcrowding was the only criterion changed. The year was changed to 1950. The Council will propose an amendment in the near future that would permit a municipality to conduct an exterior housing survey to determine an actual count of deficient units occupied by low or moderate income households, as permitted in N.J.A.C. 5:93.

COMMENT: The rehabilitation share calculations currently in place for the Third Round should continue to be used. The COAH consultants made two changes in the rehabilitation share methodology. They included all overcrowded units built before 1950, rather than 1940, as the current rules provide, and excluded spontaneous rehabilitations. These changes are not required by *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing,* 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied,* 192 *N.J.* 71 (2007). The Appellate Division, rather, emphasized that COAH "has broad discretion" when choosing the methodology for calculating rehabilitation share. *Id.* at 40. The Court, moreover, upheld COAH's decision to include only units built before 1940 in calculating need. 390 *N.J. Super.* at 40-41. The decision by the researchers to advance that date to 1950, in conjunction with their decision to exclude spontaneous rehabilitation from the calculation, has unnecessarily resulted in substantial increases in the rehabilitation share.

RESPONSE: In including overcrowded units built during the 1940s among those considered "substandard," the consultants followed the precedent of the National Park Service, which considers any property 50-years-old or older to be eligible for listing in the National Register of Historic Places. "Spontaneous Rehabilitations" were not included in this analysis because the data was not available to show how many units were brought up to code or that fell out of compliance over the course of the study period. In addition, spontaneous rehabilitations were likely captured in the updated filtering numbers. Further, the Council has the ability to make changes to the methodology pursuant to the Fair Housing Act even if the court did not require the change be made.

COMMENT: It is quite unreasonable for the new COAH rules to arbitrarily deny the Borough the opportunity to help meet its affordable housing obligation by undertaking an additional rehabilitation project if it can be shown that the need exists and the funding is available. Hopewell Borough is a very small historic community and the condition and appearance of its older housing stock is most important to its continued viability.

RESPONSE: A municipality that has an Affordable Housing Trust Fund may expend those funds to complete additional rehabilitation projects above its rehabilitation obligation. That housing activity must be included in the municipality's spending plan. However, if there is a new construction obligation that has not been met, the municipality shall first expend trust fund monies on activities that address the municipality's affordable housing obligation.

N.J.A.C. 5:97 Appendix C

COMMENT: COAH's assertions that reallocated present need was allocated to municipalities with insufficient vacant land and was "adjusted away" is contrary to the data and COAH's own rules. The data demonstrate that most municipalities that received reallocated present need had sufficient land to address their entire housing obligations. COAH's rules are clear that a vacant land adjustment does not "adjust away" the housing obligation. COAH's rules require a municipality to examine redevelopment opportunities in order to address the entire housing obligation.

RESPONSE: The commenter is correct that a municipality must keep mechanisms in place to address its unmet need and that the Council not only requires municipalities to examine redevelopment opportunities, but will also amend the regulations in the near future to provide incentives for redevelopment to occur. However, the commenter should note that in *In Re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing,* 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied,* 192 *N.J.* 71 (2007) "The FHA does not expressly require COAH to reallocate the excess

present need existing in poor urban municipalities. . . Reallocating present need from inner cities to other municipalities is fundamentally inconsistent with a constitutional growth share methodology; it suggests that the excess need in inner cities must be specifically reassigned to other municipalities. We disagree with appellants that eliminating reallocated present need unfairly burdens inner cities. If most of the new jobs and new housing in the State do not occur in distressed inner cities, then affirmatively marketing the housing that does become available in suburban growth areas will not require cities to tax their limited sources by providing affordable housing. If, on the other hand, job growth and new housing development does take place in the inner cities, then those municipalities will have greater resources to meet the needs of the poor." *Id.* at 57-60.

COMMENT: Appendix C, entitled "Prior Round Affordable Need Updated Methodology," incorporates Statewide demolitions between 1993 and 1999, and assumes that 19.5 percent of all municipal demolitions resulted in the elimination of an affordable housing unit. This assumption went into recalculating the prior round obligation. Fredon has demolished one housing unit in the last 15 years, the rest are garages, barns and other farm related outbuildings. These blind assumptions create errors in judgment.

RESPONSE: Demolition estimates were derived using the most expansive data that was publicly available - municipal level demolition data from 1996 to 2006 as reported by the New Jersey Construction Reporter.

COMMENT: Appendix C multiplies the total number of conversions and demolitions in New Jersey by 19.5 percent. It justifies this calculation based on the claim that "19.5 percent of specified owner-occupied units were valued below $ 109,547" after determining that "a household earning $ 52,276 (the state median in 2000) could afford a $ 109,547 home." The Appendix claims that this is "the portion of New Jersey's housing valued at a level that low- and moderate-income households can afford." However, low- and moderate-income households are households earning up to 80 percent -- not 100 percent -- of the State median. Thus, these numbers need to be recalculated using 80 percent of the State median. Assuming that $ 52,276 was indeed the State median in 2000 (the source of this information is not identified and it is slightly different from Census data), then 80 percent of the State median in 2000 was $ 41,821. According to the National Association of Realtors' mortgage calculator, using the same assumptions as in Appendix C, that household could afford a house costing $ 75,978. U.S. Census data from 2000 indicates that 5.8 percent of specified owner-occupied units were valued below $ 75,978 -- far less than the 19.5 percent used by COAH. Using the 5.8 percent factor instead of the 19.5 percent factor, conversions decrease from 8,720 Statewide to 2,594 and demolitions decrease from 4,040 Statewide to 1,168. This produces a net reduction in 1993-1999 secondary sources of 3,254 units, from 12,746 to 9,492, and a corresponding increase in recalculated prior round need of 2,834 units (the two numbers are not the same because some conversions were in towns that had a negative total need and thus were zeroed out). This error led to the loss of 2,834 affordable homes.

RESPONSE: The calculations in the report are correct - the confusion stems from a typo in the original Appendix footnote. In 2000, 80 percent of the Median Family Income (statewide) was $ 52,296. In the report, the footnote suggests that $ 52,276 was the state's median household income. That footnote will be corrected in a future rule amendment to read that "a household earning $ 52,296 (or 80 percent of the State's median family income) could afford a $ 109,547 home."

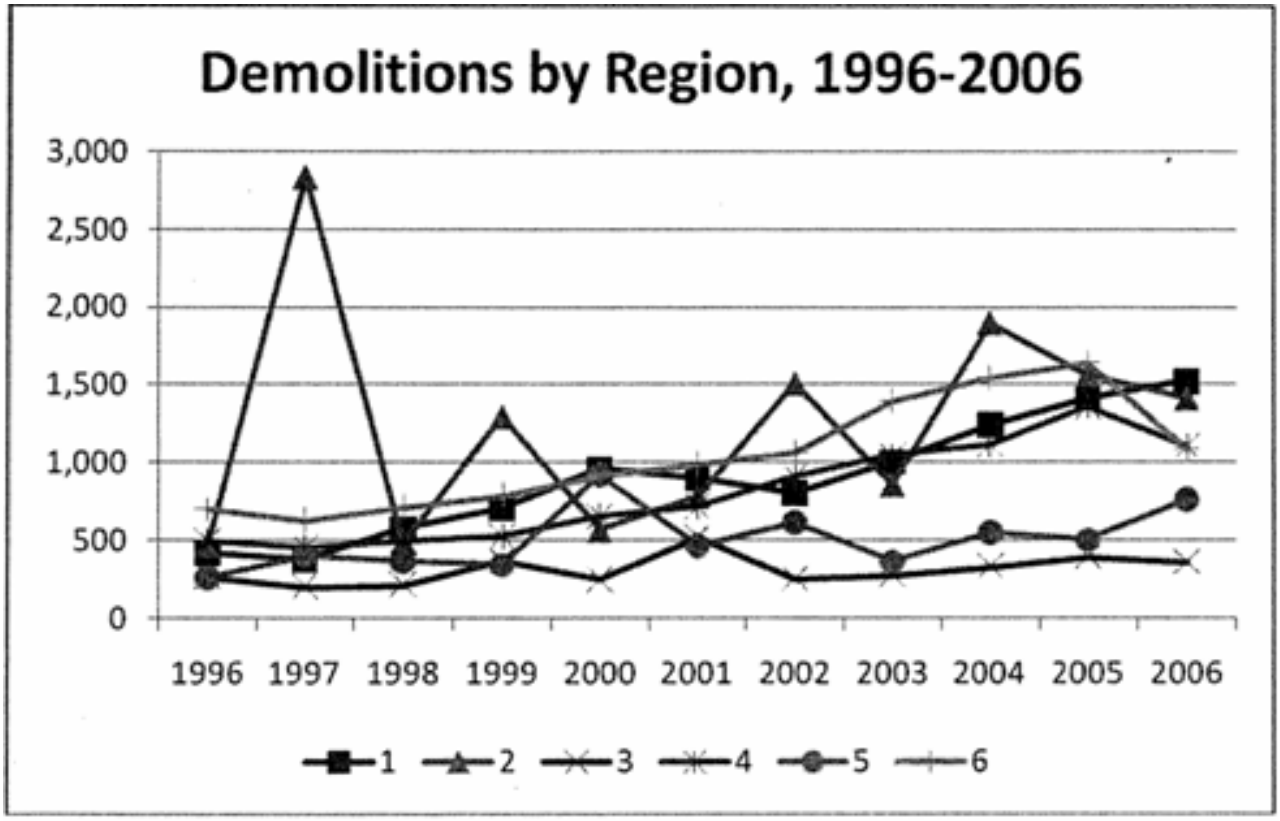
COMMENT: COAH should adopt one of the two rules for prior round numbers proposed in a rule proposal by the commenter concurrently with the submission of comments, one based on an accurate municipality-by-municipality use of the consultants' findings, one based on using the originally promulgated numbers for both the First and Second Rounds. Will COAH adopt either of these proposals?

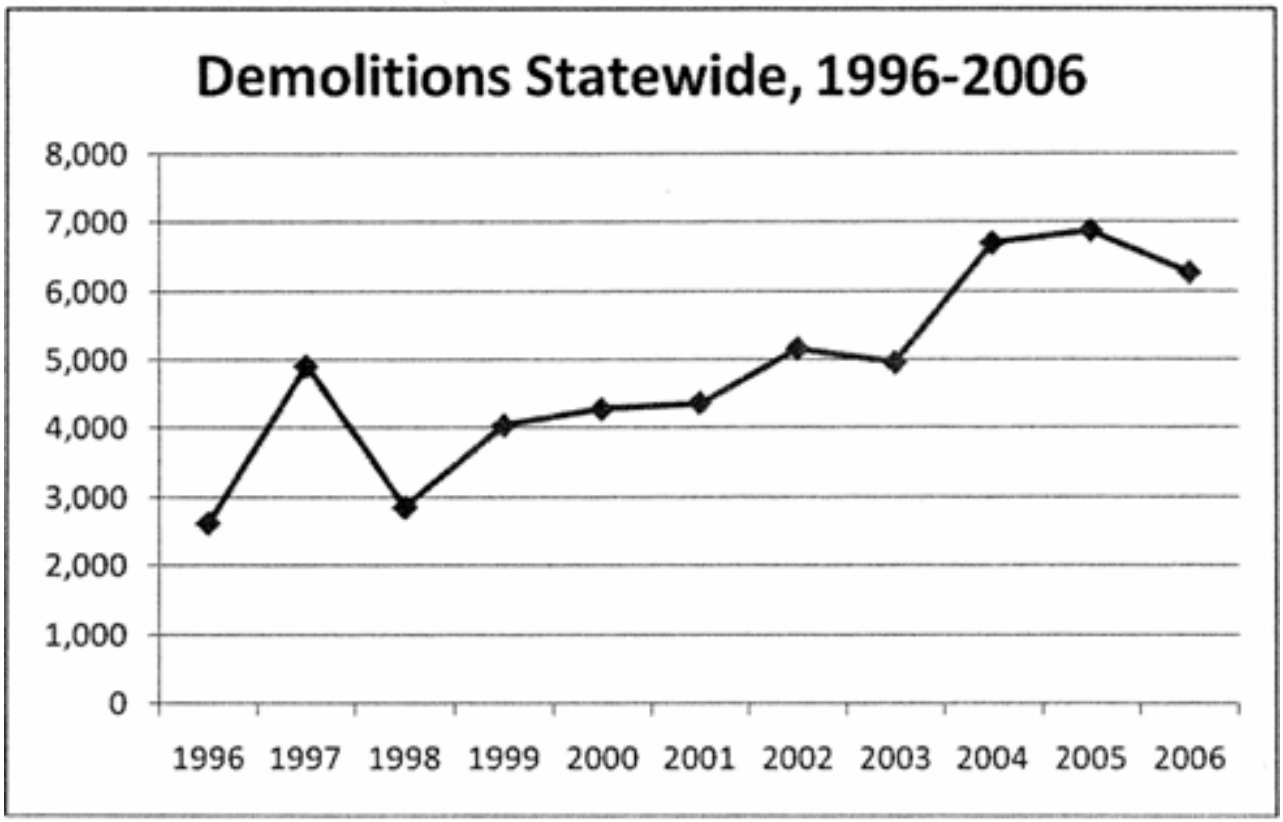
RESPONSE: The Council will not adopt the rule proposal provided by the commenter. The Council has reviewed the commenter's suggestions and believes that its decision to require municipalities to address the 1993 prior round need numbers is reasonable. The prior round numbers in Appendix C are the unadjusted 1987-99 obligation, first published in 1993. The Council made a policy decision not to update the prior round numbers for two main reasons. First, the Council recognizes that for towns to participate and proactively produce affordable housing, there needs to be

predictability in the process and the towns must be able rely on their substantive certification. By going back to the unadjusted 1993 number, some towns' prior round obligations have increased and others have decreased. Also, the growth share ratios have increased so substantially, that there is a point at which a municipality will never be able to "catch up" and construct such a large amount of affordable housing. The commenter should note, however, that under growth share, every municipality that participates in COAH's process will be required to submit a plan that addresses both its 1993 prior round obligation and its growth share projection. If a municipality continues to grow beyond its projection, it will continue to have a commensurate affordable housing obligation.

COMMENT: Page 2 notes that demolitions from 1996 to 2006 are used. This was a period of significant demolition for many communities and may skew the numbers.

RESPONSE: This was the data available from the New Jersey Construction Reporter. While the number of demolitions crept up slightly in the early 2000s, these figures were offset by lower levels in the late 1990s (see charts below). For example, the average number of demolitions Statewide during the period was 4,829, well below later totals.


Demolitions by Region, 1996-2006
3,000
2,500
2,000
1,500
1,000
500
0
1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006
1 2 3 4 5 6


Demolitions Statewide, 1996-2006
8,000
7,000
6,000
5,000
4,000
3,000
2,000
1,000
0
1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006

Click here for image

COMMENT: COAH's Appendix C on the prior round methodology originally claimed that the total Statewide Second Round need for affordable housing net of filtering was 86,956 in the version of the regulations adopted at COAH's December 17, 2007 Board meeting (see original version of Appendix C to the proposed rules at 6, attached to comment). The final proposal in the New Jersey Register, however, contains a modification stating that "58 municipalities had negative Updated Prior Round Need numbers. Converting these negative figures to zero results in the following regional and Statewide totals:," followed by a chart showing a total Updated Prior Round Need of 93,813. There is a footnote to this chart showing the original chart of 86,956 units. COAH is correct in taking out these negative numbers, since a basic principle of fair share obligations is that a town cannot have a negative fair share obligation. A Statewide summation of municipal obligations that includes negative obligations for some municipalities does not reflect the true need for the State, because effectively it offsets positive obligations in some municipalities with negative "obligations" in other municipalities that do not actually exist (again, those municipal obligations are actually zero). Indeed, COAH's chart by municipality included in Appendix C does not include any municipalities with negative obligations. Therefore, even without the other errors discussed in this Appendix, COAH has already admitted that its strategy for fulfilling prior round need falls 93,813 minus 85,951 (the total of the municipal numbers being adopted in Appendix C), or 7,862, units short, but has done nothing to address this shortfall. This error led to the loss of 93,813 minus 86,956, or 6,857, affordable homes.

RESPONSE: COAH reviewed data describing the number of housing units allocated between 1987 and 1999 through the Federal Low Income Housing Tax Credit (LIHTC) program and the State's Balanced Housing (BH) Program. These units were built but never credited toward any municipal affordable housing plan. The rule will be amended in the near future to indicate that COAH will not provide credit for these units to individual municipalities but will instead credit the total updated statewide need of 93,813, to reach an updated prior round need number of 85,960, nearly the same as that published in 1993.

COMMENT: Please include an asterisk in Appendix C of N.J.A.C. 5:97 that explains that COAH adjusted downward Morristown's Prior Round obligation in 2005 to 138 units due to errors in calculating the Town's First Round prospective need number due to employers not located in Morristown. COAH previously advised the Town of Morristown that COAH had decided to recalculate the Town's Prior Round (1987-1999) obligation from 225 units to 138 units, because of an employment adjustment due to errors in calculating the Town's First Round prospective need number due to employers not located in Morristown. The proposed Third Round Rules (N.J.A.C. 5:97 Appendix C) recalculate municipal Prior Round obligations and indicate that Morristown's Prior Round obligation is 227 units.

RESPONSE: The Council will amend the rule in the near future to include a footnote reference for towns that received employment adjustments.

COMMENT: The prior round numbers are confusing. In the second round, looking back at the numbers, the need for affordable housing increased, the filtering in another secondary source to meet that need decreased and yet the numbers on a town-by-town basis remain the same. For example, in Cherry Hill the need increased, filtering and other secondary sources decreased and yet Cherry Hill doesn't have to provide anymore units than it provided before.

RESPONSE: The prior round numbers in Appendix C are the unadjusted 1987-99 obligation, first published in 1993. By going back to the unadjusted 1993 number, some municipalities' prior round obligations have increased and others have decreased. The Council made a policy decision not to update the prior round numbers for two main reasons. First, the Council recognizes that for towns to participate in the process and proactively construct affordable housing there needs to be predictability in the process. The commenter should note that the growth share ratios have increased so substantially, that some municipalities may reach a point at which a municipality will never be able to "catch up" and construct such a large amount of affordable housing. Notwithstanding, under growth share, every municipality that participates in the Council's process will be required to submit a plan that addresses both its prior round obligation and

its growth share projection. If a municipality continues to grow beyond its projection, it will continue to have a commensurate affordable housing obligation.

COMMENT: Appendix C, entitled "Prior Round Affordable Need Updated Methodology," incorporates Statewide demolitions between 1993 and 1999, and assumes that 19.5 percent of all municipal demolitions resulted in the elimination of an affordable housing unit. This assumption went into recalculating the prior round obligation. Our review of the prior round obligation under the proposed third round indicates a substantial increase from the previous third round rules. The report indicates that the prior round obligation for Pascack Valley increased from 965 units (previous third round rules) to 1,202 units in the current rules - representing an increase of almost 25 percent - based on the recalculation of filtering, conversions and demolitions.

RESPONSE: The prior round affordable need update is based on the most expansive data publicly available - municipal level demolition data from 1996 to 2006 as reported by the New Jersey Construction Reporter.

COMMENT: COAH should explain the need for Appendix C, if, as stated in the Summary comments, COAH intended to revert to the original Second Round obligation assigned to municipalities. It would appear that no study was required in order to revert to the prior obligations.

RESPONSE: COAH issued an RFP for Appendix C but subsequently made a policy decision not to update the prior round obligation and instead revert back to the 1993 obligations. The study aided the Council in making its determination not to update the prior round numbers. However, the rule will be amended in the near future to include Low Income Housing Tax Credits and Balanced Housing program units that were not included in the fair share plans as meeting the full remaining updated 1987 to 1999 need.

COMMENT: New prior round obligation figures should be calculated for each municipality rather than using the obligations from the prior round rules. COAH and/or its consultants should have undertaken the preparation of new, assigned prior round obligation numbers for each municipality. The previous Round Three rules had much lower prior round obligation numbers. When preparing the revised rules, it was irresponsible of COAH to simply rely upon the previously approved figures from the prior rounds rather than properly analyzing the appropriate data to prepare new prior round obligation figures.

RESPONSE: The Council's consultants did update municipality's prior round new construction obligations as required by the Court in its 2007 Appellate Division decision. The Council elected to revert to the 1993 published new construction obligations for each municipality to provide predictability and certainty for municipalities participating in the COAH process. To address the difference between the updated prior round obligations as determined by COAH's consultants, and the 1993 need figures, the rule will be amended in the near future. COAH reviewed data describing the number of housing units allocated between 1987 and 1999 through the Federal Low Income Housing Tax Credit (LIHTC) program and the State's Balanced Housing (BH) Program. These units were built but never credited toward any municipal affordable housing plan. The rule will be amended in the near future to indicate that COAH will not provide credit for these units to individual municipalities but will instead credit the total updated statewide need of 93,813, to reach an updated prior round need number of 85,960, nearly the same as that published in 1993.

COMMENT: COAH's report begins with a discussion of the "Adjusted Base," which purports to measure the total prior round need for affordable housing, before secondary sources helping to meet that need (filtering + conversions - demolitions) are deducted. However, one of the components of that "Adjusted Base" actually has already been reduced by 8,962 units of filtering and conversions. Thus, COAH is double counting 8,962 units of secondary sources, and has included in its methodology 70 percent more secondary sources than it actually found occurred. COAH's consultants did recalculate filtering, conversions, and demolitions, finding a total secondary sources of 12,746 in the current rule proposal. However, they carried over the reallocated present need number from the 2004 methodology, net of secondary sources - which means that they also included 8,962 units of the secondary sources used by Dr. Burchell and invalidated by the courts. In total, the methodology includes 21,708 units of secondary sources, far more than the 12,746 that the

consultants claim were included. COAH did realize that the remaining reallocated present need was missing, and claims that "The remaining reallocated present need was credited to the third round Rehabilitation Share." However, this explanation simply does not make sense. What COAH's explanation would suggest is that those 8,962 units of need simply disappeared - credited against Rehabilitation Share without any housing actually being constructed. These 8,962 units, in COAH's explanation, were neither satisfied in suburban municipalities through reallocated present need nor will COAH require them to be rehabilitated in urban municipalities. This need, part of the constitutionally and statutorily required calculation of need, simply disappears. It may be justifiable, on the other hand, to deduct the reallocated present need that is maintained in the methodology from the Rehabilitation Share, much as reallocated present need was deducted from the original indigenous need calculated in the First and Second Rounds. But to deduct 8,962 homes from **both** reallocated present need and Rehabilitation Share -- thus making that need vanish entirely -- makes no sense. This error led to the loss of 8,962 affordable homes.

RESPONSE: The commenter is incorrect. COAH's treatment of reallocated present need and its treatment of the rehabilitation share in the methodology is not in error and remains unchanged since the 2004 rule adoption. The issues raised by the commenter were upheld in the 2007 Appellate Division decision, *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing,* 390 *N.J. Super*. 1 (App. Div. 2007), *certif. denied,* 192 *N.J.* 71 (2007).

N.J.A.C. 5:97 Appendix D

COMMENT: Will "assembly uses including bleachers, grandstands, amusement park structures and stadiums" associated with K-12 schools and higher education institutions be included? In K-12 schools, they do not generate added employees.

RESPONSE: The commenter should note that Appendix D will be amended to exclude "bleachers" and "grandstands" from growth share. In addition, K-12 schools are already excluded from growth share in Appendix D as proposed.

COMMENT: Jobs creation is currently subject to wide variation based on arbitrary construction code use groups. These groups do not correctly classify a wide range of uses. In particular, the development of two car dealerships was classified as primarily storage uses in the construction code use group.

RESPONSE: Car dealerships are classified in both the UCC and COAH's Appendix D under Business Group B.

COMMENT: A question concerns the inclusion of "assembly uses including bleachers, grandstands, amusement park structures and stadiums," which were not included in the prior rules (cf. Fig. 4.1 of Task D, Appendix F). Why are they now included? This inclusion is not likely to affect most communities, but is likely to be of great importance to the community where the new Giants/Jets stadium is to be constructed, even though few of the employees associated with it are likely to live in that community.

RESPONSE: The commenter should note that the regulation will be amended to exclude "bleachers" and "grandstands." However, the Council determined that new stadiums do, in fact, generate substantial employment and are therefore not appropriately excluded from the growth share obligation. The rule will be amended in the near future to create opportunities for municipalities to work with regional planning commissions and authorities to address affordable housing obligations on a regional level and to expand the provisions for affordable housing partnership programs to create such opportunities.

COMMENT: Adjustments should be made to the Use Group Chart to more accurately reflect jobs created as per industry standards and a proportional adjustment made for the number of affordable units required as a result. The Energy Information Administration 2003 Commercial Building Energy Consumption Survey - Building Characteristics Tables Revised June 2006 (Table B1 Summary Table: Total and Means of Floorspace, Number of Workers, and Hours of Operation for Non-Mall Buildings, 2003) indicates that the figures on COAH's Appendix D Chart may not reflect

industry standards. Fewer jobs created should mean less housing units needed, thus the number of units should be reduced proportionally.

RESPONSE: The Use Group Chart in Appendix D is as defined by the International Building Code (IBC) which has been incorporated by reference into the Uniform Construction Code (UCC). This is a construction industry standard utilized in 48 states across the country plus the District of Columbia.

COMMENT: Prisons and correctional facilities under the preemptive jurisdiction of the Department of Corrections and military bases controlled by the Department of Defense should be exempt. A municipality has no control over expansion of these facilities which are exempt from local land use control and should not be burdened by a growth share obligation resulting from expansion.

RESPONSE: Federal government employment was included in the NJDLWD's forecasts of job growth. However, the commenter is correct that these facilities are exempt from local land use control and therefore a payment in lieu of construction cannot be assessed by the municipality. The rule will be amended in the near future to create opportunities for municipalities to work with regional planning commissions and authorities to address affordable housing obligations on a regional level and to expand the provisions for affordable housing partnership programs to create such opportunities. Actual construction is used as a growth indicator because knowing where new work space is being built and how much is a stable and timely measure of growth in a municipality. Moreover, municipalities currently track these construction data through building permits and certificates of occupancy. In compliance with the court's directive, the Council and its consultants explored the possible alternatives for projecting future job growth. COAH has determined that there is no accurate method for linking future job growth to non-residential land use patterns other than the use of applying the Appendix D method of using projected construction/use to jobs created. This is supported by the consultants and their findings. Therefore, the Council believes that it is appropriate to measure new or expanded square footage of non-residential space and relate such new construction and expansion to job creation.

COMMENT: Child care center and day camp should be classified as it is not clear which UCC Use Group to categorize them under.

RESPONSE: Day care facilities are classified as UCC Use Group I-4. Determination of the appropriate use group for a day camp or any building, structure, or a portion thereof, is performed by a construction official in accordance with N.J.A.C. 5:23.

COMMENT: The rules should clarify that parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development (such as an office building) or whether the parking lot is developed as an independent non-residential development, are not subject to a development fee. Structured parking, while expensive, is generally a must in urban redevelopment areas. In other areas, it helps to minimize impervious surface. Parking structures should be viewed as infrastructure, in that they act as a catalyst for future development/redevelopment, but do not generate typical real estate type returns. Allocating the expense of a COAH obligation would add a significant disincentive, especially in urban areas.

RESPONSE: The rule will be amended in a future proposal that parking structures are excluded from storage space as follows: "Use of a building or structure, or a portion thereof for storage not classified as hazardous occupancy. Examples include warehouses, lumberyards, and aircraft hangers amongst others. S group includes S1 and S2, but parking garages are excluded."

COMMENT: The ratios used in terms of employees per 1,000 square feet of gross floor space for four separate uses- office, retail, warehouse and manufacturing/industry - does not incorporate the agri-business environment of our community. It is not uncommon for an owner to build a 5,000-square-foot. indoor horse riding stable for his or her own recreational use. No jobs are created. However, according to the study's ratios, 11 new jobs would have been created.

RESPONSE: The commenter should note that agricultural buildings, barns, livestock shelters, stables, greenhouses

and grain silos accessory to one- or two-family homes are classified as Use Group U, which is excluded from growth share. Therefore, a municipality whose industry is solely dependent on agribusiness would not be negatively affected by COAH's rules as claimed by the commenter.

COMMENT: Assisted living facilities are considered both non-residential components (here) and residential components (N.J.A.C. 5:97-6.11). They do create jobs, but care must be taken that they are not double-counted.

RESPONSE: Assisted living facilities are classified as Group I-2, unless the facility has five or fewer persons, in which case it is classified as Group R-3. No double counting occurs as a result.

COMMENT: The commenter concludes that N.J.A.C. 5:97-2.4 is invalid to the extent that it relies exclusively on net new construction minus demolition in computing growth share. The rule, as it currently stands, is inconsistent with the stated purpose of the methodology to correlate municipal affordable housing obligations with actual growth, and exclusive reliance on the use of group computations in Appendix E can produce results that do not fairly measure employment growth. *Id.*, at 64-65. N.J.A.C. 5:97-2.5(b) should be amended to state that the municipality's actual non-residential growth share obligation shall be measured based on the square footage of non-residential development converted to jobs based on the use groups provided in Appendix D, or, in lieu thereof, reliable data supplied by the developer and the municipality with respect to the actual number of jobs generated by the non-residential development.

RESPONSE: Actual construction is used as a growth indicator because knowing where new work space is being built and how much is a stable and timely measure of growth in a municipality. Moreover, municipalities currently track these construction data through building permits and certificates of occupancy. The Council believes that by using the updated Appendix D, the Council is complying with the Appellate Division decision, by addressing the Court's concerns that Appendix D had the potential to be arbitrary. The Council hired consultants to conduct a survey to investigate whether Appendix D was accurate and updated Appendix D accordingly. The consultants also conducted a national literature review and factored these findings into the Appendix D results. In compliance with the court's directive, COAH and its consultants explored the possible alternatives for projecting future job growth. While DOL data is available for current jobs, COAH has determined that there is no accurate method for linking future job growth to non-residential land use patterns other than the use of applying the Appendix D method of using projected construction/use to jobs created. This is supported by the consultants and their findings. Further, the Council received numerous comments stating that its proposed approach for measuring jobs gained and lost in vacant space was not feasible. The Council will amend its rules in the near future to no longer calculate an obligation through re-occupancy. An obligation will be created only when space is refitted in such a way that causes an expansion. In addition, the rule will be amended to permit job loss to be subtracted from actual growth based on demolition permits issued by square footage provided the structure was occupied one year prior to the demolition. Partially occupied or vacant structures could not be subtracted from actual growth.

COMMENT: The commenter has had difficulty in the past in "correcting" coding errors by municipal building departments with NJDCA. Not only is the corrected data not republished by NJDCA, NJDCA tape-stores data that is more than two years old which makes it difficult to even retrieve data that is in error. A better system should be established for correcting errors to this data and providing a mechanism by which data can be republished.

RESPONSE: If the municipality is unable to correct the data through the NJDCA Division of Codes and Standards, the Council would accept correspondence from the construction code official certifying as to the correct use group.

COMMENT: Measuring non-residential growth share in accordance with the growth share ratios set forth in Appendix D is arbitrary and inconsistent with the Appellate Division's holding that municipal affordable housing obligations must correlate with actual job growth. The reliance on UCC use groups also inadequately addresses the breadth of land uses. Provisions need to be provided for the special land uses that don't fall neatly into the categories provided. Why has COAH rejected the Courts suggestion that the obligation be based on an accurate accounting of actual job growth but instead continued to rely on the use group methodology that was: (a) criticized by the Court; (b)

vastly overestimates the amount of job growth; (c) inadequately address the breadth of land uses? If reasonable methodology cannot be developed for the projection of job growth, COAH must provide a mechanism for the counting of actual job growth.

RESPONSE: Actual construction is used as a growth indicator because knowing where new work space is being built and how much is a stable and timely measure of growth in a municipality. Moreover, municipalities currently track these construction data through building permits and certificates of occupancy. The Council believes that by using the updated Appendix D the Council is complying with the Appellate Division decision, by addressing the Court's concerns that Appendix D had the potential to be arbitrary. The Council hired consultants to conduct a survey to investigate whether Appendix D was accurate and updated Appendix D accordingly. The consultants also conducted a national literature review and factored these findings into the Appendix D results. In compliance with the court's directive, COAH and its consultants explored the possible alternatives for projecting future job growth. While DOL data is available for current jobs, COAH has determined that there is no accurate method for linking future job growth to non-residential land use patterns other than the use of applying the Appendix D method of using projected construction/use to jobs created. This is supported by the consultants and their findings.

COMMENT: It's not clear with regard to square footage whether the data is referring to floor area or ground area, because many of those are outdoor uses. This is particularly true for the A4 assembly use.

RESPONSE: All use group ratios include a 15 percent common space adjustment and are based on gross floor area, including A4 assembly uses.

COMMENT: The chart should more clearly identify that houses of worship are excluded.

RESPONSE: Houses of worship are already excluded under A3 in Appendix D and do not require further clarification.

COMMENT: While the commenter understands that many universities build facilities that do not increase jobs in a community, most of the schools that exist in our municipality, as small public and private schools, create a significant number of jobs for low and moderate income households. They are exactly the kinds of employees for which affordable housing regulations were enacted. The exemption for all schools and universities is too broad. Certainly K-12 schools should be held accountable for the jobs they bring into the community. The commenter would like to be able to collect development fees from educational institutions.

RESPONSE: The Council will amend the rule in the near future to further differentiate exemptions with regard to higher education. With regard to K-12 schools, the Council determined that it was appropriate to exempt this inherently beneficial use after receiving numerous comments regarding the inequity of imposing an obligation upon public school systems that are expanding because of increasing school enrollment tied to new development. By linking an affordable housing obligation to K-12 uses, commenters stated that the Council was unduly burdening municipalities already struggling to address the costs of new development in their municipalities.

COMMENT: Where it is shown that a use will generate no new jobs, it should be separately classified as an excluded use in the Use Group listings, or as a Miscellaneous Use that is excluded from the growth share calculation.

RESPONSE: The Council believes that greater clarity is provided by listing the excluded uses within the broad use group category.

COMMENT: The use of square footage as a surrogate for employment as detailed in this Appendix needs further refinement. An overly simplistic categorization of uses will result in a misrepresentation of employment generation and housing need. The categories of employment generating uses identified in Appendix D need to be expanded. The rules should allow municipalities to challenge the employment estimates generated by the application of the ratios. Where a municipality can demonstrate actual employment figures differ from those based on the surrogate square footage of new

development, the actual figures should be used to calculate and/or refine growth share.

RESPONSE: Actual construction is used as a growth indicator because knowing where new work space is being built and how much is a stable and timely measure of growth in a municipality. Moreover, municipalities currently track these construction data through building permits and certificates of occupancy. In compliance with the court's directive, COAH and its consultants explored the possible alternatives for projecting future job growth. While DOL data is available as a measure of actual historical job growth, COAH has determined that there is no accurate method for linking future job growth to non-residential land use patterns other than the use of applying the Appendix D method of using projected construction/use to jobs created. This is supported by the consultants and their findings. In regard to subcategorizing existing use groups to differentiate between labor-light and labor-intensive sectors within a given use group umbrella in order to determine actual growth share, the Council believes that the waiver process would cover the commenter's suggestion, particularly with regard to the Storage use group.

COMMENT: The A-4 and A-5 classifications are confusing. For example, the factor for bleachers is puzzling. Bleachers are either outdoors on playing fields, or indoors within a gymnasium, or in arenas or stadia. If in a gym or on a playing field, bleachers are generally part of a school and are therefore appropriately excluded from the calculation. If part of a large stadium, they are already covered under A-5. If in an arena, they are covered under A-4. For grandstands and amusement park structures, are outdoor areas and equipment counted or just buildings? What is the difference between an arena, which is A-4 (with bleachers), a stadium, which is A-5 (with bleachers) or bleachers (A-5) alone?

RESPONSE: The commenter should note that Appendix D will be amended to exclude "bleachers" and "grandstands" from growth share. For amusement park structures, COAH will utilize the construction official's determination of what counts as an amusement park structure.

COMMENT: The acute care facility, University Medical Center at Princeton (UMCP) of Princeton HealthCare System, will be relocating in 2011 to a new facility being built less than three miles away from its current site. The sole purpose of this building is to accommodate the pressing regional healthcare need for new technology and modern hospital infrastructure, so UMCP can continue to carry out its vital mission more effectively and efficiently. It is a replacement project, not an expansion of either its mission or employee base. It will serve the same people and employ the same people. Our core recommendation is that hospital construction should be exempt from affordable housing mandates - particularly construction that represents: construction of a new replacement facility within a short distance from the old facility; no significant expansion of its employee base; and no increased regional demand for affordable housing.

RESPONSE: The Council agrees that replacement square footage of hospitals ought to be exempted from payment-in-lieu fees and the corresponding municipal affordable housing obligation in light of the inherently beneficial mission of these facilities and their fragile financial state in New Jersey. The rule will be amended to exempt the replacement square footage of hospitals that relocate or consolidate within the same COAH housing region. However, any square footage of hospital use built above and beyond the replaced structure is subject to growth share. The Council has elected not to provide a full growth share exemption at this time as, according to the NJDLWD Division of Labor Market & Demographic Research, this sector is expected to be in the top seven of industries with the greatest employment growth between 2004 and 2014. In addition, a review of the New Jersey Construction Reporter revealed that certificates of occupancy were issued for 5,007,165 square feet of I-2 use groups between 2004 and 2008. Notwithstanding, hospitals experiencing expansions may submit a waiver to the Council demonstrating that the expansion does not result in additional job increases. In addition, where the relocated hospital facility is not within the same COAH region, but is within close proximity of the existing facility, for example, in an adjacent municipality, the Council may entertain waivers to this requirement.

COMMENT: The proposed rule should be amended so that construction for health care uses by nursing homes would no longer generate a growth share obligation. Said amendment would be similar in construct to the methodology that the proposed rule employs to provide that construction for educational uses (Use Group E) and institutions of

higher education (Use Group Various) no longer generate a growth share obligation. The commenter respectfully requests that Appendix D be amended to list nursing homes as excluded in Use Group I. No new nursing facilities (that is, additional inventory of beds) have been added to the New Jersey complement of licensed beds since 1993. With a 20-year-plus average age of physical plant, nursing facilities will be required to build replacement facilities over the next several years. When these aging facilities are rebuilt they are most likely going to be single occupancy resident rooms (more square footage per resident) and likely to have a smaller overall licensed capacity. In the absence of new physical plant investment, the future of facilities that care for the 45,000 residents and employ over 50,000 New Jerseyans will be jeopardized by the proposed rules.

RESPONSE: The Council agrees that replacement square footage of nursing homes ought to be exempted from payment-in-lieu fees in light of the benevolent mission of these facilities. The rule will be amended in the future to exempt from growth share, the replacement square footage of nursing homes that relocate or consolidate within the same COAH housing region. However, any square footage of nursing home use built above and beyond the replaced floor area would be subject to growth share.

COMMENT: Greater differentiations between the ratios used for different types of warehouse facilities are needed. Certain types of warehouse operations are much more job-intensive than others, and additional warehouse categories are needed to reflect this difference. In the category broadly labeled "storage," the modern trend is toward large highly automated warehouses and self-storage facilities, both with a much lower job ratio than older, more labor-intensive facilities. Basing the jobs on area of buildings constructed or renovated would be more accurate if it focused on recently constructed buildings. But the general conclusion is that a far more accurate (and therefore fairer) measure of actual job creation would be to determine this at the time of certificate of occupancy.

Specifically, COAH should lower the proposed job generation ratio for warehouse construction (or "S" use group) in the 2008 proposed rules to 0.26 jobs per 1,000 square feet. In COAH's 2004 adopted rules, COAH established the job generation ratio for warehouses at 0.2 jobs per 1,000 square feet (sq.ft.) In the recent proposed rules, COAH would increase the jobs ratio to 1.5 jobs per 1,000 sq.ft. of warehouse space - a 750 percent increase. This proposed new warehouse job generation ratio of 1.5 jobs per 1,000 sq.ft. does not comport with the number of jobs in existing warehouses in this municipality - covering millions of square feet. The commenter has prepared a study of actual jobs in warehouses in this community as well as in four other municipalities with high concentrations of warehouses. Nothing has occurred in the warehouse industry in New Jersey for COAH to have such a changed view of warehouse job generation between its initial third round rules of December 2004 and the proposed rules of January 22, 2008. The commenter's warehouse study raises serious flaws in the survey prepared by COAH's consultant. The commenter's survey of 77 warehouses ranging from 4,800 sq.ft. to one million sq.ft. found a median of 0.26 jobs per 1,000 sq.ft. COAH should revise its proposed job generation ratio for warehousing from 1.5 jobs per 1,000 sq.ft. to 0.26 jobs per 1,000 sq.ft. Leaving the ratio alone would grossly overstate the responsibility which municipalities with warehouses should bear.

RESPONSE: In addition to the 2007 survey performed for Task 4 in Appendix F of the Council's regulations, the Council's consultants reviewed 12 studies/surveys completed nationwide between 1987 and 2006. These studies show a range of .46 jobs per 1,000 square feet to 1.92 jobs per 1,000 square feet; a median of 1.11 and a mean of 1.05. Taking flex space into consideration, the Council's 2007 survey of New Jersey businesses demonstrated that indeed a range of possibilities exist within the UCC use group for storage. To address the commenter's concern, the rule will be amended to use a lower ratio (from 1.5 jobs per 1,000 square feet to one job per 1,000 square feet) for storage uses reflective of the national literature review results conducted by the Council's consultants. With regard to the extremes between labor-intensive and automated storage space, sufficient data was not available from the consultants at this time to make a further differentiation within the storage use group but the Council will consider waivers based on actual jobs in this category in recognition of this potentially wide disparity within the use group. The commenter should further note that ratios of employees per 1,000 square feet account for a normal level of vacancy. There is a natural cyclicality to vacancies not unlike other cycles in the real estate market. Thus, even though using a constant ratio for estimating employees per 1,000 square feet may translate to temporary overestimates or underestimates of actual jobs within a

municipality when vacancy rates are low or high, these fluctuations will tend to even out over time.

COMMENT: Appendix D should be modified to stipulate that no affordable housing obligation should be generated by a Continuing Care Retirement Community. As noted above, a Continuing Care Retirement Community represents a distinct land use that is highly regulated by the Department of Community Affairs, N.J.A.C. 5:19, encompassing a blend of health care services and housing. Health care services are provided throughout the campus, including substantial health care services provided in independent living units (as well as in assisted living and skilled nursing care units).

RESPONSE: The rule will be amended in the near future to classify Continuing Care Retirement Communities, which are currently coded R2, as generating a non-residential obligation only. They will be treated as R1 uses for the purpose of estimating job growth.

COMMENT: New bleachers and grandstands (Use Group A5) will not generate new jobs therefore such facilities should be classified as exempt.

RESPONSE: Appendix D will be clarified in the near future to reflect that bleachers and grandstands are exempt from a growth share requirement.

COMMENT: All jobs created by a development are not the same, with many development types generating part-time jobs rather than full-time jobs, such as retail. From the information present with the proposed regulations, it is not clear whether these job creation numbers take into account the differences in jobs created. Are the Appendix D figured, full-time equivalents (FTEs) or simple summations of the total jobs, regardless of hours worked, created by a non-residential development? The Council should ensure that all job creation estimates are in full-time equivalents to recognize the differences in the types of jobs created within the same

RESPONSE: The Econsult ratios, which are based on a survey of New Jersey businesses conducted by the reed group, counts full-time and part-time employees equally. The Listokin study, which is inclusive of most of the comparable studies the consultants reviewed for this task, seems to suggest that not all ratios from other studies were based on full-time equivalents (FTEs), noting for example that the low end of the recommended range of employees per 1,000 square feet for retail uses should be used when FTEs are used. With regard to the Council's implementation of these results, if there was a large sample size and/or it was close to the ratio used in the December 20, 2004 regulations, the Council used the New Jersey survey. If neither of those was the case, the results were weighted toward the national literature review, which would have accounted for part-time jobs. The implementation schedule provided by N.J.A.C. 5:97-3.2(a)4 must include a detailed timetable for units to be provided within the period of certification and must demonstrate a realistic opportunity as defined under N.J.A.C. 5:97-1.4. In general, its ranges are fairly broad, and it notes that even within a building type, there can a wide range of employee densities, particularly with warehousing and manufacturing space.

COMMENT: The exemption for "institutions of higher education" needs clarification. The exemption is too broad and apparently purports to cover all use groups of construction. No distinction is made for college or university classroom buildings, office buildings, dormitories, athletic facilities, research laboratories, or post- high school trade schools. Is a computer learning school an institution of higher education? In other words, are all buildings constructed on college campuses exempt or only selected use groups? The impact of this exemption on a small university town such as Princeton Borough would be to greatly reduce the availability of affordable housing despite the increase of non-residential construction and job growth. The construction of libraries, lecture halls, research and office space and similar space by an institution of higher learning creates the very high probability of an increase in employment, ranging from a need for custodial staff to administrative staff and teaching staff. Also, dormitories, graduate housing and faculty housing will generate an affordable housing obligation. Appendix D should be revised to make clear that dormitories, graduate housing and faculty housing will generate a growth share obligation. One option to make this clear would be to include such construction with Use Group R1 which currently covers hotels and motels. Rather than

permit a complete exemption, COAH should require that institutions of higher education must provide data on a case-by -case basis to the municipality in connection with a development application for non-residential construction to permit a determination as to the real potential for job growth and attendant growth share obligation.

RESPONSE: The Council's intent in exempting higher educational uses was not to give blanket exclusions to all construction built or owned by an institution of higher education. Rather the intent was to exempt classroom and laboratory classroom facilities, study facilities, meeting and conference rooms as these spaces are codified as B-Business Use or A-3 Assembly depending on occupancy maximum of 50-/+ under the Uniform Construction Code. Applying the Group B jobs per 1,000 square feet ratio for classrooms and other assembly academic spaces would result in a disproportionately high jobs obligation for institutions of higher education as jobs are associated with actual office use, which is not taken into consideration in Section 303.1 "Exceptions" of the building subcode as adopted by N.J.A.C. 5:23-3.14. In addition, dormitories are limited to consumers of the institution of higher education, that is, students, and will be treated like a non-transient hotel or motel, R2. Graduate student housing are similar to farm labor housing and will also be excluded from growth share. Faculty housing will not be excluded at this time. The rule will be amended in the near future to specify how construction by institutions of higher education will generate a growth share obligation. The Council will also clarify its definition of higher educational uses to be consistent with that used by the National Center for Education Statistics' (NCES) Integrated Postsecondary Education Data System (IPEDS), a division within the U.S. Department of Education's Institute of Education Sciences. The IPEDS collects institution-level data from postsecondary institutions in the United States (50 states and the District of Columbia) and its overseas jurisdictions, (Puerto Rico, American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Marianas, Palau, and the Virgin Islands). Accordingly, an institution of higher education (postsecondary) is defined as an organization open to the public that has as its primary mission the provision of formal instructional programs with a curriculum designed primarily for students who are beyond, but excludes institutions that offer only vocational (leisure) and adult basic education programs.

COMMENT: The most recently proposed rules, which remove higher education construction from growth share calculations, treat independent colleges and universities in a manner similar to public institutions of higher education. This approach introduces substantially more equity between the State's higher education sectors and the commenter supports that principle.

RESPONSE: Council appreciates the commenter's support.

COMMENT: The commenter agrees that hotels, motels and dormitories should be classified as non-residential construction since they do not provide permanent housing opportunities.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The commenter is concerned about the financial burden that these regulations will impose upon the State's already financially distressed nonprofit hospitals. Hospitals should be exempt from the COAH obligation, not only because they offer inherently beneficial uses to the residents of this State, but also because there is little correlation between a hospital's expansion and the need for affordable housing. Simply upgrading and replacing aging hospital buildings does not necessarily mean that a municipality is growing. Hospitals serve regional needs, not merely the needs of a particular community. And perhaps most importantly, hospital expansion is not a sign of economic development. There have not been any new hospitals built in the State of New Jersey since the 1970s. All new construction is related to replacing aging structures or moving existing hospitals to new locations. In fact, the economic health of the state hospital is of grave concern to many. Since 1992, 18 hospitals have closed and five more have declared bankruptcy. This is hardly an indicator of economic growth and development. Those hospitals that are expanding are doing so primarily to meet the pressing needs for additional space. New approaches to delivering health care and the need to house new and emergent technologies is driving the need for larger facilities. Health care technology is getting bigger not smaller. While the number of beds in a hospital may remain constant, the additional square footage generated by the need to comply with new State and Federal mandates will necessarily increase. Hospitals cannot bear the additional

financial cost associated with the growth share methodology and will be unable to update their facilities. The COAH regulations as drafted will have a chilling effect on hospitals' abilities to replace or renovate existing facilities. As a result, access to quality care will be compromised. Unlike commercial enterprises, hospitals are not in a position to pass along the cost of creating affordable housing to the consumer. Hospitals, like schools and institutions of higher education, are deserving of this exemption. The Council should revise Appendix D to exclude hospitals and allow us to continue our mission of bringing the best up-to-date healthcare and technology to the citizens of the state of New Jersey.

RESPONSE: The Council agrees that replacement square footage of hospitals ought to be exempted from payment-in-lieu fees and the corresponding municipal affordable housing obligation in light of the inherently beneficial mission of these facilities and their fragile financial state in New Jersey. The rule will be amended to exempt the replacement square footage of hospitals that relocate or consolidate within the same COAH housing region. However, any square footage of hospital use built above and beyond the replaced structure is subject to growth share. The Council has elected not to provide a full growth share exemption at this time as, according to the NJDLWD Division of Labor Market & Demographic Research, this sector is expected to be in the top seven of industries with the greatest employment growth between 2004 and 2014. In addition, a review of the New Jersey Construction Reporter revealed that certificates of occupancy were issued for 5,007,165 square feet of I-2 use groups between 2004 and 2008. Notwithstanding, hospitals experiencing expansions may submit a waiver to the Council demonstrating that the expansion does not result in additional job increases. In addition, where the relocated hospital facility is not within the same COAH region, but is within close proximity of the existing facility, for example, in an adjacent municipality, the Council may entertain waivers to this requirement.

COMMENT: COAH should provide guidance as to how a municipality is able to assess a growth share obligation on either local, county, State or Federal development.

RESPONSE: A municipality may not impose a payment in lieu or a development fee on a local, county, State or Federal government.

N.J.A.C. 5:97 Appendix E

COMMENT: Appendix E intends to summarize the prior round rules for the purpose of determining post-1986 credits. The last section of Appendix E incorporates a rule amendment to N.J.A.C. 5:93-7.4(d). The rule amendment lowered the average rents/prices of affordable units for projects included in plans that were the subject of a petition or plan amendment after January 1, 2001. The rule did not require a lowering of rents/prices for affordable units contained in projects that were the subject of a petition or certified plan prior to January 1, 2001. COAH's original third round rules adopted in 2004 were consistent with the prior round rules, because they enabled credits for units constructed in accordance with the prior round rules. However, the next to the last paragraph of Appendix E reads, "For affordable housing developments constructed after January 1, 2001." This section is supposed to be based on the cited rule amendment, but the language does not track the amendment, which stated: "Municipalities that petition for substantive certification or amend a plan that includes a new inclusionary development on or after January 2, 2001 shall establish by municipal ordinance that the maximum rents of low and moderate income units within each inclusionary development shall be affordable to households." COAH has substituted the word "constructed" for "petition" which retroactively places a new requirement on affordable units that were planned and undertaken based on certified plans consistent with the rules adopted by COAH. There are many affordable housing developments that were planned on the basis of COAH's applicable rules, in accordance with substantive certification, and COAH should not attempt to change those rules now by utilizing modified language in a rule that memorializes a prior rule. In addition, there may be a large time delay from when a project received its development application approvals from when it receives its certificate of occupancy. The commenter understands the need for COAH to implement new standards and requirements but such implementation should take into account that a municipality has to abide by the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-1 et seq. regarding periods of protection from a zoning change afforded preliminary and final development application approvals. A town is precluded by the MLUL from changing the zoning on a site for set periods of time; thus, they would not be able to accommodate any subsequent COAH rule amendments.

RESPONSE: Appendix E intends to summarize the prior round rules for the purpose of determining post-1986 credits only with regards to specific credits in N.J.A.C. 5:97-4 that reference criteria in Appendix E. Not all post-1986 credits are subject to Appendix E. The intent of N.J.A.C. 5:97-4 and Appendix E is to put forth in one location all the criteria for receiving credits for past housing activity constructed in accordance with the rules that were in place at that time. However, in order to address the commenter's concern, the rule will be amended in the near future to say created and occupied or which received municipal approvals, whichever is applicable. Under the proposed amendments, the date a municipality petitioned the Council would no longer be relevant with regard to pricing of units, controls on affordability, etc. When a developer goes in for approvals, the current rule governing these provisions is what would be applicable to that development. Once effective, Appendix E would supersede the applicable portions of N.J.A.C. 5:93.

COMMENT: It is good to see that in Appendix E, the number of bedrooms in age-restricted units are finally required to equal the number of age-restricted units. In the current rules and in all prior versions of COAH's rules, the number of bedrooms in age-restricted units had to equal at least the number of age-restricted units. This created problems in that developers would build primarily two-bedroom and sometimes even three-bedroom age-restricted units on the premise that they could charge more for the larger units, overlooking the fact that the units would not be occupied by the larger households for which the higher income thresholds were established. Consequently, the affordability of these units for the one and two-person households for whom they were being built was questionable. However, this change does not belong in Appendix E, which governs the criteria for post-1986 credits, since it was not a requirement when those units were being built. Instead, it belongs in the text of COAH's rules and it also needs to be reflected in amendments to the UHAC rules to be consistent.

RESPONSE: The section of Appendix E will be amended in the near future to reflect what was written in N.J.A.C. 5:93. It was not the Council's intent to change the meaning of the section; therefore, such a change is not needed in the text of the rules. However, the Council agrees with the commenter and will address the issue in a future rule amendment for new units.

COMMENT: Units that were created as part of a first or second round compliance plan whose affordability controls have already expired or will expire before or during the third round should not render a municipality non-compliant with its affordable housing obligations with respect to the prior rounds. It is unfortunate that affordability controls sometimes expire, but the municipality that permitted the units to be built to meet a prior affordable housing obligation should not be penalized for the loss of these units, as long as the units can be demonstrated to have been compliant with COAH's rules in effect at the time they were built.

RESPONSE: The Council will continue to count credits for units that had been the subject of affordability controls that were required by N.J.A.C. 5:92-12.1 and 5:93-9.2 provided the controls ran the full required term.

N.J.A.C. 5:97 Appendix F

COMMENT: The projections for the period 2004 to 2018 grossly overestimated the municipality's potential growth. Based on fact that this municipality contains extensive environmentally sensitive features combined with the fact that the municipality does not contain a "Center" pursuant to the State Development and Redevelopment Plan, is located within the drainage areas of three Category One reservoirs and is serviced by individual wells and septic systems, the Township enacted low density zoning which is consistent with the goals and objectives and designated land development categories of the State Plan.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP) and N.J. Highlands Council. One key component, the Land Use/Land Cover database is based on 2002 orthophoto images of the State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. The consultants have been working with NJDEP to incorporate additional information with regard to increasing the size

of certain stream buffers and refining where development may be permitted within floodplain areas, both of which are regulated by the recently adopted Flood Hazard Control Act. In addition, COAH's consultants are updating the vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rule changes.

COMMENT: The commenter requests that COAH revisit the internal rate of growth between 2004 and 2018 for employment and housing projections. The COAH projections are totally unrealistic as to the rate of growth projected.

RESPONSE: The projections from the allocation model reflect patterns of municipal growth as observed in the past tempered by the amount of vacant land available for future development. The methodology will be revised in the near future to reflect updated growth projections based on municipal level housing and employment growth observed over the period from 1993 through 2006. The sample period is long enough to capture both periods of strength and weakness in the local economies and the projected growth is consistent with patterns observed in the past. The growth forecast uses "S-curves," which account for the relationship between a municipality's growth rate and how close to build-out the municipality is. Growth rates slow as a municipality approaches its build-out constraint. The consultants will calculate S-curves based on the 1993-2006 historic growth, and the capacity limits that consider the new DEP Water Quality Management Rules. This is appropriate because the revised capacity will impact future growth, but not past growth. The municipal-level housing data will be updated through 2006 using certificate of occupancy information and information on demolitions, and employment data will be updated using 2006 data from the New Jersey Department of Labor and Workforce Development. The updated methodology will include new growth rates for the 1993-2006 period based on the updated data, and recalculated the S-curves for each COAH region for both housing and employment. The commenter should note that these growth projections are long-term projections, and they may run counter to short-term growth trends experienced by a municipality.

COMMENT: The filtering located in suburban municipalities (23,626 units) was quite conservative, since in their analysis (Appendix F, Task 2), the consultants counted a dwelling unit as filtered down only if: a) it had decreased in relative value by more than one standard deviation, and b) the average income of the census tract in which it was located had also decreased by more than one standard deviation. Thus down-valued units in census tracts in which income had not decreased so much, in particular tracts where income was already low, were not counted.

RESPONSE: The filtering that occurred in the 1993 to 1999 period took place during a time when the New Jersey housing market was in a down-to-flat period. From the 1999 to 2005 period, the housing market was in an "up" state, and a historically unprecedented one at that. In the earlier period, there was only a modest amount of new construction because price levels were insufficient to cover the cost of construction, and declining-to-flat house prices also dampened general demand for new homes. Consequently, price declines were most pronounced in built-up urban centers, while prices declines were relatively more modest in suburban locales. This confined most filtering to older, urban centers. But, during the more recent period, this dynamic was reversed. Significant price increases spurred significant levels of new construction. While there were notable infill projects in some urban centers like Hoboken, most new home construction has taken place in suburban locales. As construction proceeded even as the market cooled in mid-decade, the supply of new homes exceeded existing demand. This dampening in demand was further exacerbated by the unprecedented run-up in energy costs, which made heating, cooling and commuting to and from these newly constructed (mostly suburban) dwellings even less attractive to many homeowners. Conversely, the relative lack of new supply in urban locations combined with their relatively smaller size (and lower energy costs) and shorter commutes increases their relative attractiveness. Consequently, expectations are that suburbs will bear a relatively greater impact of the current housing downturn and urban centers less than during the last downturn. Thus, the model incorporates all these facts to predict that suburbs will experience a relatively higher percentage of filtering going forward while urban centers experience a relatively lower percentage than they did during the last housing cycle.

COMMENT: Of the 4,476 units COAH found filtered down and were affordable to low and moderate income households, 312 units sold for over $ 300,000. Please address how it is possible that these units can be considered to have "filtered down" to low and moderate income households.

RESPONSE: The qualifying income guidelines provided by the Council were matched up to the tract household income that the unit is located in, by the year of the unit's transaction. As long as the tract income did not exceed the COAH qualifying income, a downward filtered unit is counted as adding to the supply of affordable housing.

COMMENT: The revised filtering projections rest on far more solid data.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The vacant land analysis erroneously includes freshwater wetlands on approved NJDEP letters of interpretation (LOIs).

RESPONSE: COAH's consultants used the DEP's 2002 Land Use/Land Cover spatial database to identify wetlands, and treated all such areas as being constrained and thus undevelopable.

COMMENT: COAH's actual data only shows any downward filtering occurring in 64 municipalities between 1989 and 2005. Yet COAH, in its actual filtering measurements for the period 1993 to 1999, says that there was net downward filtering in 533 New Jersey municipalities - including expensive municipalities such as Colts Neck, Haddonfield, and Parsippany-Troy Hills where COAH did not find any units that actually filtered. On what basis does COAH believe that filtering occurred in over 450 municipalities in which there was no actual filtering observed?

RESPONSE: The first sentence is incorrect. The data indicate actual filtering in 98 municipalities. Of these, there are only net gains from downward filtering in 64 municipalities. For the remaining municipalities in the State, the average net filtering rate across the 98 municipalities was applied to their housing stock. These represent non-arms length transactions and rental units, which are not in COAH's data.

COMMENT: Growth projections are exactly that, projections, and can be changed by any number of factors including national and international market forces. Current market indices point to a recession and the housing market has seen significant losses over the past year, which does not indicate strong growth in the third round planning period. Non-residential growth depends on the economic marketplace. Office and industrial development is not as strong as projected in many areas, especially in rural areas of the State and is stronger in others, such as suburban communities.

RESPONSE: The projections from the allocation model reflect patterns of municipal growth as observed in the past tempered by the amount of vacant land available for future development. The growth projections will be updated in the near future based on municipal level housing and employment growth observed over the period from 1993 through 2006. The sample period is long enough to capture both periods of strength and weakness in the local economies and the projected growth is consistent with patterns observed in the past. The commenter should note that these growth projections are long-term projections, and they may run counter to short-term growth trends experienced by a municipality.

COMMENT: The filtering model incorporates an assumption of down-to-flat conditions in the housing market for the period 2006 to 2018 for all subregions of the State. The U.S. housing market has never experienced such a prolonged downturn. Also, to assume that, even if this downturn might occur in some regions of the State, it will occur in all regions of the State which historically have had somewhat different housing market performance seems unlikely. The high filtering numbers from 1999 to 2018 are thus based on market conditions that are extremely unlikely to occur. How did COAH reach the conclusion that such a long downturn in the housing market is likely for all subregions of the State?

RESPONSE: Such an unprecedented and prolonged downturn is supported by the fact that the post-2005 period follows an unprecedented growth in house prices and construction. While the rate of appreciation/depreciation can exhibit substantial variation from one locality to another, the direction of price movements does not. This is because national factors, such as interest rates, credit availability and economic growth are important drivers of housing cycles. As evidence, recent news announced that U.S. house prices have experienced their first year-on-year decline since the

Great Depression. While the magnitude of the price declines vary from one region and city to the next, this statistic is national. Moreover, the duration of housing cycles is measured in years. As the New Jersey house price index in the report indicated, the last down-to-flat period in New Jersey's housing market was from 1989 to 1999, a period of 10 years. Since the rate of appreciation in the most recent cycle far exceeded the rate of appreciation before the pre-1989 downturn, a more prolonged and deeper downturn is not only expected, but is already occurring.

COMMENT: To estimate buildout, COAH utilized, instead of local zoning, a "minimum parcel size." In "large lot low density areas (one acre or more per DU)," COAH employed a default value of one-half acre, a lot size far below that in most of the Highlands, and in many other rural areas of the state; this is therefore an inappropriate standard.

RESPONSE: In the December 2007 analysis of vacant land and its development capacity, COAH's consultants used a minimum parcel size that was equivalent to the residential density used for that category of land in that municipality. In areas outside of sewer service areas, that density was based on DEP's septic density map. The consultants are updating their vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rules changes, as well as giving greater consideration to newly available municipal zoning data from the Highlands Council. In addition, reliance on municipal zoning, land use and historical property ownership patterns, may not be an appropriate set of conditions on which to predicate growth projections that are to be used for the purposes of identifying growth areas in which affordable housing opportunities must be captured.

COMMENT: Mr. Downs notes in his updated study that the expansion of mortgage market products has greatly contributed to affordability of housing. As can be seen from any look at recent headlines, these products are quickly becoming less available, reducing the purchasing power of low- and moderate-income households significantly and thus making filtering significantly less likely. Many of the examples in Mr. Downs' report of innovative mortgage products are no longer generally available on the market (for example, zero down payment interest only mortgages) and thus buying power is reduced for lower-income households, even as interest rates remain at similar levels. Has COAH taken into account the reduced buying power of lower-income households into the calculation?

RESPONSE: In the enumeration of filtered units, the Council did find examples of transactions that are representative of what the commenter describes. For example, about five percent of filtered units occurred at prices greater than $ 300,000 to households earning incomes at or below COAH income guidelines. Such transactions were likely facilitated by the easy credit conditions and exotic mortgages the commenter describes.

COMMENT: COAH provided, in response to an OPRA request, a list of all units that it found had actually filtered from 1989 through 2005, totaling 4,476 units of downward filtering and 1,596 units of upward filtering, for a net filtering total of 2,880 units. However, the filtering report claims that 3,311 units filtered during this period. Please explain the disparity, which though fairly small becomes significantly larger when extrapolated to the entire universe of housing units.

RESPONSE: The Council does not know how the commenter arrived at these numbers. The consultants re-examined the municipal-level file and count exactly 3,311 units as a net gain from downward filtering.

COMMENT: The proposed projections for both job growth and housing increases seem to be erroneous when juxtaposed to land use laws, current zoning, and growth projections from other sources. For example, announced expansions in the casino industry significantly eclipse the projected employment growth for Atlantic City detailed in Appendix A and Appendix F (N.J.A.C. 5:97). The affordable housing obligations calculated through the use of incorrect housing and employment projections will further exacerbate the harm caused to the economy of the state through these regulations.

RESPONSE: As indicated in the report, the forecast model allocates countywide projected growth among all the municipalities in a county. The model projects growth for each municipality based on historic growth rates, including

consideration of how close to build-out the municipality is, subject to the constraint that growth in all the municipalities in a county must sum to the projected county control total. The municipal level projections sum to the county totals because the county totals are the best available long term employment and housing projections available for the whole State. However, these projections are only available at the county level, and not the municipal level. There are instances in which there is insufficient land in the municipality to accommodate all the projected growth. In these instances, the growth beyond what the municipality can accommodate spills over into neighboring municipalities. The projections from the allocation model reflect patterns of municipal growth as observed in the past tempered by the amount of vacant land available for future development. The growth projections will be updated in the near future based on municipal level housing and employment growth observed over the period from 1993 through 2006. The municipal-level housing data will be updated through 2006 using certificate of occupancy information and information on demolitions, and employment data will be updated using 2006 data from the New Jersey Department of Labor and Workforce Development. The sample period is long enough to capture both periods of strength and weakness in the local economies and the projected growth is consistent with patterns observed in the past. The growth forecast uses "S-curves," which account for the relationship between a municipality's growth rate and how close to build-out the municipality is. Growth rates slow as a municipality approaches its build-out constraint. COAH's revised methodology will calculate S-curves for each COAH region for both housing and employment based on the 1993-2006 historic growth, and capacity limits based on revised estimates of vacant, developable land, taking into account the new DEP Water Quality Management Rules. The commenter should note that these growth projections are long-term projections, and they may run counter to short-term growth trends experienced by a municipality.

COMMENT: The report, "Analysis of Vacant Land in New Jersey and Its Capacity to Support Future Growth," prepared by the National Center for Neighborhood and Brownfields Development, utilized 2002 NJDEP Land Use/Land Cover as the basis for its findings. Provisions should be incorporated to allow municipalities to challenge future capacity figures based on updated information regarding land use as well as to employ an alternative, parcel based methodology that more accurately estimates vacant buildable land.

RESPONSE: If the municipality is lacking vacant land to address the projected growth share obligation, then it may apply for a growth projection adjustment pursuant to the procedures in N.J.A.C. 5:97-5.6.

COMMENT: The sample studied consisted entirely of units that turned over through sales. However, over one-third of the housing units in New Jersey are rental units (2000 Census). This study does nothing to measure the changes in rental housing affordability, yet it extrapolates its conclusions over the entire housing stock in New Jersey, including rental housing. There is no explanation justifying how the housing market for for-sale houses tracks the housing market for rental homes, and in fact, despite economic theory, rental and for-sale housing markets perform very differently, as evidenced by the widely varying rent:sale price ratios in different markets. (See, for example, Federal Reserve Bank of San Francisco Economic Letter 2004-27, "House Prices and Fundamental Value," available online at http://www.frbsf.org/publications/economics/letter/2004/el2004-27.html). This omission makes the study fundamentally unreliable as a measure of filtering for the entire low- and moderate-income housing market and COAH should not use it as applied to rental housing. Why did COAH exclude rental units from its study?

RESPONSE: The commenter is correct that rent/price "levels" can vary significantly across markets. However, what the commenter ignores is that rent/price "movements" co-vary with each other with a significant amount of positive correlation. And this is especially true within a given locale (for example, neighborhood or municipality). For example, when a neighborhood gentrifies (for example, upward filters), both rents and prices in that neighborhood typically increase. Conversely, when a city de-populates (for example, downward filters), both rents and prices in that city typically decline. Moreover, the Council's research is constrained by rules that allow only the use of publicly available data. Deeded title transfers for home sales are public records. Lease deals for apartment rentals are not. The commenter implies that the exclusion of movements in rents from the data could systematically bias the results. However, for this to be true on a meaningfully large scale, it would have to be the case that in most Census Tracts and municipalities where prices increased, rents simultaneously decreased. Or that in most Census Tracts where prices fell, rents simultaneously rose. This is highly unlikely. While the consultants agree that it is certainly likely that the percent

of units which filtered between owner-occupied households is not exactly the same as the percent which filtered between renter-occupied households, the differences should be reasonably small. Moreover, they should also be in the same direction; that is, either up or down. Lack of access to rent-level data prevented us from directly modeling the rental segment of the market. But based upon the stylized fact that rents and prices typically move together within a given jurisdiction over time, it is reasonable to believe that both the direction of filtering and the magnitude of filtering is likely to be reasonably similar in both segments of the housing market. Hence, the consultants applied the percent that filtered to the entire stock of housing in a given market to implicitly include rental units in the filtering projections.

COMMENT: There is no documentation in the filtering study that the sample showing only 5,083 units that filtered down to the affordable cluster and only 30,766 units filtering total is statistically significant to the point where it is justifiable to apply it to the entire housing stock of 3,443,981 units Statewide. These numbers are far lower than the numbers in the 2004 methodology which was based on the American Housing Survey, which despite having some flaws for the purpose of a filtering survey is well documented as a statistically relevant data source. Please document why these results are statistically significant to the degree required to include them in the prior round and Third Round methodology.

RESPONSE: The percent of clean, arms-length home sales that filters are applied to the housing stock to account for both rental units that filter as well as those transactions excluded from the data because of incomplete/unclean data or non-arms-length conditions. These account for statistically significant percentage of the housing stock. Moreover, the analysis was required to be constrained to publicly available data sources. Deeded title transfers are a matter of public record, whereas lease deals for the occupancy of rental units are private contracts. Hence, this analysis meets both statistical and legal standards.

COMMENT: The age of the housing stock is not a factor in the filtering projections. Yet literature on filtering is generally predicated on the idea of a "chain of moves" in which older housing filters down over time to lower-income households. The lack of inclusion of age of housing stock in the filtering projections leads to projecting more filtering in newer suburban areas of the State than actually is likely to occur, and ignores the general consensus on the importance of this factor in the academic literature. Why did COAH fail to include this factor in its filtering analysis?

RESPONSE: Age is implicitly included in the analysis because only existing units of housing were contained in the data. The condition for a unit to be counted as "filtered" is that it had to experience a (relative or absolute) depreciation in value to become occupied by a low-to-moderate income household. New housing units were neither included nor counted in the analysis.

COMMENT: Past filtering models used by COAH excluded substandard units from the filtering results. This model does nothing to exclude substandard units, and thus may count as a credit against prospective need a unit that also, in another context, is a source of need under present need. To say that substandard housing serves prospective need when one of the tasks COAH is charged with under *Mount Laurel* and the Fair Housing Act is to eliminate substandard housing for low- and moderate-income households makes no sense. How does COAH justify including substandard units in its filtering projections?

RESPONSE: While data on the physical condition of units is not extensive, the consultants dropped observations for which the price was deemed to be unrepresentative of an up-to-code unit (for example, **[**<=**]**$ 10,000). Moreover, it is unlikely that most units can be in such poor shape as to be considered uninhabitable because almost all lenders require a home inspection. Since almost all lower-income households need a mortgage to finance the purchase of a home, it is implicit that the majority of the housing stock would have to pass a home inspection in order to be purchased. The report clearly states what price and income cutoffs were used to identify units that filtered downward and now qualify as affordable.

COMMENT: Filtering models generally assume that at some point housing filters out of the housing stock altogether, becoming uninhabitable and perhaps eventually being demolished. Perhaps the most notable study of this

phenomenon in New Jersey is George Sternlieb and Robert Burchell's "Residential Abandonment: The Tenement Landlord Revisited", which found that a significant portion of the residential buildings in poorer neighborhoods in Newark studied in Sternlieb's seminal "The Tenement Landlord" had ceased to be functioning housing units and were either abandoned or demolished. The filtering report fails to capture these units, which represent a kind of downward filtering that actually reduces the housing stock available to low- and moderate-income households and reduces the total amount of net filtering occurring statewide. Note that demolitions do not capture all of these units as many units remain standing but vacant. Why did COAH fail to subtract such units in its filtering analysis?

RESPONSE: These abandoned units are offset by the construction of new units. Newly constructed housing is almost always built for middle-to-upper income households. The classic dynamics of filtering are as follows: When high-income households vacate their existing homes for (larger) new ones, their previous homes become available. Since these homes are older and smaller than the new ones, they obtain a lower price. Hence, they are likely to become occupied by a household with a lesser income, for example, a middle income household. The housing unit of that middle-income household in turn becomes available, and can be occupied by a moderate-income household. This process--which is the very definition of filtering--continues on until it reaches low-income households. The homes that are left behind by low-income households are either abandoned and/or demolished. However, COAH's filtering analysis only examined repeat sales of existing homes. Neither new homes nor abandoned homes were included in the analysis. So, the exclusion of abandoned homes is offset by the likewise exclusion of new homes in the data, which essentially net each other out in the counting of filtered units.

COMMENT: The Econsult analysis, used as the economic foundation for your regulations, bases its assumptions on a 15 percent internal rate of return (IRR) and a four percent profit. To tie the new regulations to one set of income measures, which are far below what our industry proformas new housing communities at, particularly at a time when financing and underwriting terms from lenders and investor are becoming more conservative, is a certain formula for failure. Proforma profit margins today are in the 20 to 25 percent range and IRR is in the 30 percent range thus invalidating the economic model used to support the 20 percent set affordable set aside provision in the rule. Firms operating here will cherry pick the few high income, high rent projects that can overcome the high barriers to development and invest their resources in other markets. The proposed regulations will insure that no new affordable housing will be built and that work force housing and middle income housing will continue to be absent from the landscape. This will accelerate the pace of jobs, wages and talent leaving New Jersey and result in continued deterioration of New Jersey's economy.

RESPONSE: The importance of the starting profit margin and internal rate of return is to establish the profitability level that needs to be achieved, net of both the affordable housing obligation and the offsetting density bonus. As noted in footnote 25 of page 20, whether the IRR is set at 15 or 20 or 25 percent (or higher), this does not materially change the amount of incentives that are needed to offset the affordable housing obligation. However, to address the commenter's concern, the report will be amended in the near future to assume a higher starting profit margin and internal rate of return.

COMMENT: Housing unit and employment growth projections set forth in Appendix F are based on inferior and out-dated State- and regional-level data that when distributed downward to the local level becomes increasingly inaccurate. Therefore, there should be a process by which municipalities can provide alternate growth projections separate and apart from the process N.J.A.C. 5:97-5.2 and 5.6, particularly given the fact that COAH's consultant utilized a methodology and data that simply is not accurate at the municipal level; and is based on LU/LC data and aerial photography (2002) that does not accurately depict existing conditions and changes that have occurred since 2002, does not consider whether vacant land is in fact zoned for residential use, does not consider tax lot lines, utilizes an inaccurate presumptive residential density based on developed Census Blocks rather than current zoning, and projects growth based on N.J. Department of Labor and Workforce Development data rather than NJDCA Certificate of Occupancy data that the municipalities are clearly directed to utilize when they account for their own specific growth share. The data and methodology utilized by COAH's consultant to project growth is inferior to on-the-ground local data that municipalities can gather themselves and have at their disposal, including, but not limited to, present-day land use,

tax maps with lot lines, zoning data, Certificates of Occupancy issued, development approvals and local knowledge and estimates of which parcels will develop and when.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture and Department of Environmental Protection (NJDEP). One key component, the Land Use/Land Cover database is based on 2002 orthophoto images of the State having a resolution of one acre. As such, planned and actual development between 2002 and 2008 may have used up some portion of these lands. Similarly, COAH's growth estimates for the period 2004-2018 begin with the utilization of land use capacity estimates as of 2002 the most recent available. Here again, actual and planned development since 2002 and 2004 may account for some portion of the growth that COAH estimated would occur out to 2018. It is also important to note that the growth share obligation is based on certificates of occupancy issued since January 1, 2004. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this data in the future.

COMMENT: What would the impact on the model be if the market in fact turns upward again at some point before 2018 (for example, four to five years of up housing market from 2014-2018)?

RESPONSE: If the upturn is significant enough to push prices above construction costs, it would likely set off a new round of housing construction that in turn would initiate another wave of filtering. But, because the price appreciation and levels of new construction during the recent boom were unprecedented, the duration of the downturn will likely be lengthier than previous downturns.

COMMENT: COAH should state if it will require that municipalities in the State's growth areas meet substantially increased obligations if environmental constraints prevent the obligations from being met in municipalities to which the obligations have already been assigned.

RESPONSE: Municipalities may meet their affordable housing obligations through a variety of mechanisms. Zoning is one such mechanism, and other options available to municipalities include rehabilitation of existing units, creation of ECHO units, redevelopment, municipally sponsored 100 percent affordable developments, accessory apartments, a market to affordable program, provision of supportive and special needs housing, assisted living residences, regional contribution agreements, the affordable housing partnership program, and extension of expiring controls.

COMMENT: The assumption that "future development on each category of vacant land would occur at the higher of the municipality's current average density or the median density of residentially developed lands in similar municipalities within the same COAH Region" is inconsistent with the data noted from the American Housing Survey (AHS) stating that the median lot size for all residential units declined by 26 percent between 1995 and 2001. Given resistance to density and increased environmental regulation, in addition to this AHS data, it would be more appropriate to assume density levels below the median densities calculated. Lower assumptions potentially could impact the conclusion that sufficient vacant land exists to provide for the affordable housing need.

RESPONSE: The use of increased densities is supported, not refuted, by the American Housing Survey. Smaller lot sizes equate to higher land use density over time.

COMMENT: Significant numbers of new dwelling units are projected to be provided in community type 2 - which are generally more built-out suburbs such as Hamilton Township (Mercer County), Cranford Township (Union County), and Cherry Hill Township (Camden County). These communities, and many other communities in this category, have

resisted new development at the moderate density levels used by the consultants in the report, instead down-zoning significant tracts as vacant land or buying those tracts as open space. Given that COAH's power to force higher densities is generally limited, what makes COAH confident that the densities projected in these communities will be realized? The largest amount of residential growth is projected for community type 4 - rural communities. Yet these communities, such as Woolwich Township (Gloucester County), Springfield Township (Burlington County), and Allamuchy Township (Warren County) have proven extremely resistant to new development, often down-zoning large tracts of land to densities well below the one to two dwellings per acre used in this report, including areas formerly designated for sewer service. Unless COAH is extremely aggressive about employing the techniques described in the regulations on municipal projection adjustments such as ordering zoning at higher densities, which are described in the regulations as permissive on nature, the amount of growth projected to happen in these municipalities will not be realized and the affordable housing need not met. Please state what steps COAH will take to ensure municipal projections are met in these municipalities.

RESPONSE: The rule will be amended in the near future to provide minimum presumptive densities and maximum presumptive set-asides based on SDRP planning areas.

COMMENT: In its January 2007 decision, the Appellate Division rejected COAH's use of growth share because COAH had not demonstrated that its regulations would satisfy the requirements of the Mount Laurel doctrine. The panel required COAH to justify a future use of growth share with certain information (see *In re Adoption of N.J.A.C. 5:94 and 5:95*, 390 *N.J. Super.* at 53-54). The commenter has reviewed COAH's expert reports and do not believe that COAH has satisfied the requirements that the Appellate Division set for using a growth share approach. If COAH contends that it has met those requirements, COAH should set forth in detail how it has.

RESPONSE: In following with the Appellate Division's directive, COAH issued an RFP and retained experts who provided COAH with the most up to date data available. In addition, the expert consultants provided COAH with detailed analyses of how municipalities could meet their obligations by conducting a nation wide study and also by looking specifically at the economy of New Jersey and at New Jersey' s unique development patterns.

COMMENT: The Appellate Division specifically ordered COAH to consider whether the five factors identified by Anthony Downs as prerequisites to filtering, namely (1) an overall housing surplus; (2) a surplus of new housing construction over new household formation; (3) no major non-price barriers, such as discrimination, that limit mobility among low-income households; (4) moderate operating costs for newly built units; and (5) a limited number of poor households, actually were occurring. COAH and its consultants appear to have ignored these factors altogether. COAH is violating the Appellate Division ruling by failing to analyze these factors, which are designed to examine whether the preconditions for filtering exist in the housing market as a whole. Because analyzing filtering is such a speculative exercise without strong precedent -- to the commenter's knowledge there are no examples outside New Jersey in which it is actually used as a component of public policies on affordable housing that has an impact on the amount of housing provided -- and the consultants' methodology is a new one never used before that they created for this exercise, it is doubly important to analyze the Downs factors which COAH has long held to be prerequisites of filtering. Please address why COAH has failed to consider the Downs factors.

RESPONSE: Econsult cites a substantial body of peer-reviewed academic research on the dynamics and characteristics of filtering, and uses this research to derive COAH's own definition of filtering. While there is variation in this research over the definition of, and prerequisites for filtering, it is widely respected as authoritative. Moreover, as the consultants point out in the report, this definition is more rigorous than what was used in previous rounds because it requires a change in both a housing unit's value and the occupant's incomes.

COMMENT: Downs' first factor is an overall housing surplus. Downs claims that in order for filtering to happen, the housing market must have sufficient vacancy rates for two reasons: (1) otherwise scarcity will put upward pressure on prices; and (2) the excess of occupants over units will prevent units from coming onto the open market, instead being passed on within non-market networks. Downs identifies normal vacancy rates as five percent in the rental market and

two percent or less in the owner-occupied market. According to the 2000 Census, which to our knowledge is the most recent comprehensive survey of housing units that identifies tenure, several COAH regions are experiencing below-standard vacancy rates in both the rental and for-sale market:

COAH Region	Rental vacancy rate	For-sale vacancy rate
1	3.0 percent	1.2 percent
2	4.8 percent	1.2 percent
3	2.9 percent	0.9 percent
4	6.9 percent	1.6 percent
5	6.7 percent	2.0 percent
6	10.1 percent	2.5 percent

(Source: Census 2000 File SF3, Tables H7 and H8, vacant non-seasonal units in each category divided by occupied plus vacant units in each category)

The rates in Northern and parts of Central New Jersey are not high enough to allow filtering to occur. Additionally, the data in COAH Regions 4 and 6 may be inflated because of second homes in these regions. Given these data, COAH should state why it believes filtering is occurring.

RESPONSE: Both of these statements are problematic. First, filtering can occur if there is no surplus of housing. Consider a municipality with a vacancy rate of seven percent. If newly built units become occupied by current residents, they vacate their existing dwellings. Their previous dwellings can filter down to new occupants via in migration of new residents and/or new household formation by existing residents. The seven percent vacancy rate will then be the same as it was prior to the construction of new units. Second, the comment implicitly assumes that a general lack of surplus housing at the Statewide level must also be true at the local level, and statistics comparing New Jersey's vacancy rate to the U.S. average is provided to support this. According to the 2006 American Community Survey (U.S. Census), the U.S. had a national vacancy rate of 11.6 percent. According to this same Survey, here are the vacancy rates of several New Jersey municipalities: Camden: 21.1 percent, Newark: 13.9 percent, Trenton: 16.5 percent, Atlantic City: 21.6 percent. Clearly, these all exceed the national average, and often by a significant margin.

COMMENT: Also relevant to the question of non-price barriers is data on the high degree of segregation in New Jersey. The New Jersey Public Policy Research Institute, a Rutgers-based institute that identifies, analyzes and disseminates information critical to informed public policy development in and for the African-American community in New Jersey and the region, in December 2002, released a policy report on residential segregation in New Jersey as part of its annual report, The State of Black New Jersey, (available at www.njppri.org). The report stated as follows: "Data

from the 2000 decennial Census shows hyper-segregation of blacks relative to whites in most New Jersey counties except Cumberland, Gloucester and Warren. Essex County - which has the highest levels of African Americans - is also the most segregated. Eighty percent of the Essex County population, in 2000, would have to move for the county to become more integrated." What is really stunning about the data is that from 1990 to 2000, the levels of hyper-segregation remain fairly constant. Some of the counties with cities containing large numbers of blacks, such as Camden, Hudson, Mercer Middlesex and even Essex, became less segregated, but our mapping of racial changes in all the counties does not show significant movement outward. Looking at cities on the maps such as Newark, Trenton, New Brunswick and Camden, they have all lost black residents, but those leaving are being concentrated in surrounding communities. In the case of Newark, it is East Orange, Orange and Irvington, for Trenton it is Ewing, looking at New Brunswick, it is Franklin and North Brunswick and for Camden it is Pennsauken. Given the data showing continued barriers to integrated communities that reflect significant continued discrimination, why does COAH believe that filtering is occurring? Anthony Downs' original 1988 report and new report attached to these comments both conclude that filtering reinforces socioeconomic segregation by reinforcing a neighborhood hierarchy based on different neighborhoods having different status, and poorer people being excluded from higher-income areas. The new report notes that this process "create[s] conditions of unequal opportunity that are unjust -- especially to children." Given that the purpose of *Mount Laurel* and the Fair Housing Act is to break down patterns of racial and socioeconomic status caused by discriminatory zoning practices, it is inconsistent with the *Mount Laurel* doctrine to use a secondary source that reinforces those patterns. Please state why filtering is being used despite its reinforcement of discriminatory housing patterns contrary to the goals of Mount Laurel and the Fair Housing Act.

RESPONSE: Filtering is defined as the process by which existing housing units become inhabited by persons of a lower income than its previous occupants, and usually at a lower price. The New Jersey property transactions data used in the analysis explicitly examined for these conditions, and found thousands of specific instances. The commenter simply asserts that COAH "believes" filtering is occurring, when in fact the Council presents substantial evidence it did--and is--occurring. Lastly, the commenter contradicts himself. They cite Census Data showing that African-Americans are moving out of larger urban center to nearby suburbs, and then claim that hyper-segregation still exists because these households still cluster together geographically in the same county. Movement from cities to inner-ring suburbs is a classic pattern of filtering, and one in which those household's housing outcomes was likely improved, and the data reflect that.

COMMENT: COAH's data shows 2,880 units of net filtering from 1989-2005. Yet the filtering report claims that 26,744 units filtered in that period. This is based on extrapolating the filtering percentage to the entire housing stock. But given that only some units actually changed hands from 1989-2005, the units that did not change hands cannot be said to have filtered. Please explain why COAH believes that almost 10 times as much filtering happened as it actually observed.

RESPONSE: The commenter is implicitly assuming that the only type of filtering event that counts is when a single-family housing unit sells under arms-length conditions, and is recorded correctly by the state and county. Of New Jersey's nearly 3.5 million housing units, only 510,908 (approximately 15 percent) were single-family units that transacted under arms-length condition. Of these, 11 percent were deleted from the dataset due to incomplete, incorrect and/or missing data. Lastly, the commenter ignores the filtering of rental units. These units are not a matter of public record, but are certainly sizable in number. While there are likely some differences between the numbers of owner-occupied units that filtered and the number of rental units that filtered, these are likely to be sufficiently small and random because prices and rents in a particular locality co-vary in their movements with each other over time. Hence, the consultants believe that the sample of single-family units that filtered is sufficiently representative of the larger population of housing units that filtered.

COMMENT: COAH has based its newest growth projections on there being 1.03 million acres of developable land. The Star-Ledger, however, quoted Commissioner Doria as stating on December 10, 2007 when he appeared before the Assembly Housing and Local Government Committee that "while 1.3 million acres of land in the state remain undeveloped, standards proposed by the Department of Environmental Protection would limit any future housing

development to 300,000 [acres]." This appears to be an acknowledgement that COAH has not met the Appellate Division's mandate regarding ensuring that there is sufficient developable land for its growth share approach to work. If it is possible to do so, please indicate how COAH's use of 1.03 million acres to allocate Third Round obligations can be squared with Commissioner Doria's statement that there is only 300,000 acres in a way that would suggest that COAH has complied with the Appellate Division's mandate.

RESPONSE: The Council will propose an amendment in the near future that recalculates the amount of vacant, developable land based upon DEP's new Water Quality Management rules, new data available from the Highlands Council on municipal zoning for the 88 Highlands municipalities, and new data on Category 1 streams. In regard to the Commissioner's statement regarding the availability of 300,000 acres, that statement was made prior to receiving the consultant's data and reports and was based upon an estimation of how much land would be available under a worst case scenario in applying new proposed DEP regulations and the Highlands proposed Regional Master Plan. However, as noted above, the comprehensive consultants' analysis demonstrates that 1.012 million acres is the most accurate analysis based upon the most recent Statewide data available.

COMMENT: The proposed rules were not formulated in consideration of the recommendations of the State Development and Redevelopment Plan and, as a result, COAH's proposed rules and the State Plan are incompatible. The current State Plan directs growth to Planning Areas 1 and 2 and away from Planning Areas 3, 4 and 5 unless the growth occurs within designated "centers." And yet COAH's proposed rules did not consider this long established State policy, first expressed in the original State Plan which was adopted on June 12, 1992. Instead, COAH's new rules identified developable lands throughout the State without consideration of their planning area designation by the State Plan, so that "developable" lands in the Environmentally Sensitive (PA-5), the Rural/Environmentally Sensitive (PA-4B), the Rural (PA-4) and the Fringe (PA-3) planning areas were given the same weight as developable lands in the Metropolitan (PA-1) and Suburban (PA-2) planning areas. Therefore, the minimum number of required affordable housing units generated for a given municipality from the population and job projections contained in Appendix F was not cross-tabulated against the amount of developable lands in the planning area locations promoted for development by the State Plan. As a result, municipalities that do not have sufficient lands within Planning Areas 1 and 2 to locate the required affordable housing units will be forced to utilize lands in Planning Areas 3, 4 and 5.

RESPONSE: The *Mount Laurel* decisions and the FHA make clear that every municipality has a constitutional obligation to provide for its fair share of the regional need for affordable housing. While the Council prefers affordable housing developments to be located in PA 1, 2 or centers, the Council does not believe it would be appropriate to eliminate all lands outside of these areas from an analysis of vacant, developable land or and affordable housing obligation, particularly as the State agencies, such as DEP, that regulate use of the land would permit development on these lands. Further, the commenter should note that the MOU between the SPC and COAH, dated July 13, 2004, states, "All planning areas can accommodate growth and therefore can accommodate a commensurate affordable housing obligation in a manner consistent with the goals, objectives, and policies of the State Plan." the Council's consultants used residential development densities within sewer service areas that were either the community's average existing density or the median of similar communities in its geographic area. Densities outside of sewer service areas were based on the DEP's septic density standards. Non-residential densities were similar to residential. The consultants are updating their vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rules changes.

COMMENT: Downs also notes in relation to moderate operating costs for newly built units a general building trend towards larger units with more amenities. Given this trend of building increasingly expensive housing, very little of which is affordable to middle-income buyers, how does COAH expect new units to set off the chain of moves required for filtering to happen? And how does COAH anticipate that larger units built in the last few decades will filter down to low- and moderate-income buyers?

RESPONSE: It is precisely because many existing households have both the means and desire for larger and better homes that filtering occurs. These new homes may not be affordable to middle-income households, but they are

affordable to upper-income households. When high-income households vacate their existing homes for (larger) new ones, their previous homes become available. Since these homes are older and smaller than the new ones, they obtain a lower price. Hence, they are likely to become occupied by a household with a lesser income; for example, a middle income household. The housing unit of that middle-income household in turn becomes available, and can be occupied by a moderate-income household. This process--which is the very definition of filtering--continues on until it reaches low-income households.

COMMENT: The commenter requests that COAH provide a status update regarding its efforts to analyze the impact of pending environmental regulations on its growth projections because the information it expected to have and that it told the Appellate Division it would have has not been considered. In a December 27, 2007 certification submitted to the New Jersey Superior Court, Appellate Division, Lucy Voorhoeve wrote at pages 8-9 that: "COAH's consultant is also reviewing the possible effects of potential DEP regulations regarding the Water Quality Management Planning rules which were proposed on May 21, 2007. In addition, the consultant is analyzing the effects of the Highlands Master Plan, which was just released on November 30, 2007." Please state where these analyses stand.

RESPONSE: COAH's consultants have obtained additional spatial data from DEP with regard to stream buffers associated with the recently adopted Flood Hazard Area Control Act and has completed its updating of the vacant land development capacity to fully consider the pending Water Quality Management Planning Rules changes that will impact sewer service areas and septic densities. The revised results will be made public with adoption of the Final Third Round Rules and proposed amendments by the COAH Board in early May.

COMMENT: Please state what steps COAH will take to comply with the Appellate Division's requirements regarding growth share and vacant, developable land in the event that the Highlands Master Plan and designation of additional Category One waters prevents municipalities from satisfying affordable housing obligations that have been assigned to them. Will COAH recalculate the Third Round obligations? Will it develop a new scheme for allocating affordable housing obligations?

RESPONSE: The Council has updated its methodology based on zoning information currently available from the Highlands Council. Category One waterway data has not been made available to the Council, and therefore has not been used in the updated projections. The Council will evaluate the implementation of the Highlands Master Plan once it has been adopted.

COMMENT: The sample studied is applied to all units in New Jersey, both for the Second Round and the Third Round. However, in any given period only a limited number of homes, especially owner-occupied homes, actually change occupants. There is no way in which a unit in which the same household has stayed in the house through the entire period can be said to have filtered, especially in a way that meets the need measured by COAH, which is based solely on the formation of new households. A 1996 Chicago Title and Trust Company study found that the average New Jersey home turns over once every 11.4 years. Thus, most New Jersey homes should have been excluded from the Prior Round calculations because they did not turn over from 1993-1999; a significant number of New Jersey homes should be excluded from calculations going forward because they will not turn over until 2018. Please explain why COAH did not apply its filtering percentage to the number of units expected to change occupants over the period studied, and instead chose to apply it to housing units in New Jersey.

RESPONSE: The filtering data only included repeat sales of existing homes that transacted under arms-length conditions, which meets the criteria set out by the commenter in the beginning of their comment. Going forward, this percentage was applied to the entire housing stock to account for rental units that filter as well as those property transactions that were not included in the data.

COMMENT: Growth from redevelopment was not considered by the consultant in allocating growth to municipalities. A number of developed municipalities that have undergone substantial redevelopment since 2002 are reflected in the allocation of growth to municipalities with low, and sometimes negative, growth allocations. By not

considering growth from redevelopment, many municipal allocations are underestimated. At the same time, in order to satisfy the Statewide need, municipalities that have historically grown are assigned large numbers, which are over estimated in many respects due to environmental, regulatory and statutory constraints. Those municipalities that are under estimated will not escape a growth share obligation, as the obligation will be based on certificates of occupancy from 2004 forward. On the other hand, municipalities that are over projected are required by the regulations to use such over projected number as the minimum obligation in a Fair Share plan. The failure to consider redevelopment in the growth share allocation is inconsistent with the opinion of the Appellate Division in invalidating a portion of the 2004 regulations, as it was noted that COAH cannot exempt redevelopment from the growth share allocation. Proper consideration of redevelopment would serve to reduce the projected obligations of municipalities that cannot realistically provide for affordable housing based on a lack of water or sewer infrastructure, or other environmental or regulatory restrictions, without impacting Statewide need.

RESPONSE: The Council's consultants have attempted to identify the amount and location of redevelopment that has occurred in the State in recent years. Spatial and other data was used because no central database is maintained by the State or other reliable organization. The results of this analysis are sufficient to make a general assumption about the average amount of redevelopment that has occurred on a statewide basis and which may occur in the future, but the data is insufficient to make reasonable assumptions about county levels and especially municipal levels of future redevelopment. All redevelopment under the revised Third Round rules carries with it a growth-share affordable housing obligation, consistent with the Court's opinion. This additional growth will serve to offset some of the growth on vacant land that would otherwise occur in other areas of the State due to recently adopted or pending environmental and land use restrictions.

COMMENT: Based on certificates of occupancy issued from January 1, 2004 to December 31, 2007 and the proposed growth share ratios, Bridgewater Township has a COAH obligation right now of 75.41 units for that four-year period. Projected out to 2018, our town would have an obligation of 282 units, not the 1,115 that COAH has listed.

RESPONSE: COAH's methodology will be updated in a future rule amendment to include historic growth rates through 2006. The municipal-level housing data will be updated through 2006 using certificate of occupancy information and information on demolitions, and employment data will be updated using 2006 data from the New Jersey Department of Labor and Workforce Development. This will result in new growth rates for the 1993-2006 period based on the updated data, and recalculated S-curves for each COAH region for both housing and employment. These growth projections are long-term projections, and they may run counter to short-term growth trends experienced by a municipality. A four-year pattern of certificates of occupancy, as noted by the commenter, is too short to project into the future for 12 years. A long-term projection should be based on a longer pattern of historic performance such as the 1993-2006 pattern that will be utilized by COAH's consultants in a future rule amendment.

COMMENT: The growth projection submitted for our municipality greatly exceeds the data we submit to COAH on an annual basis that represent the actual growth within the township.

RESPONSE: The rules include a provision that allows a municipality to seek an adjustment to the household and employment projections provided in Appendix F, based on an analysis of existing land capacity. See N.J.A.C. 5:97-5.6.

COMMENT: Please indicate how big of a difference is expected and is acceptable to COAH between the data used in this report and "local on-the-ground knowledge of individual land parcels," which is the term used at page 4 of the report. The report states "Although the data used in this analysis is the most current and accurate available, and the methodology for estimating vacant land was the most thorough and appropriate, there may be differences at the municipal or community level when compared to local on-the-ground knowledge of individual land parcels." COAH should provide this information because it is essential for its satisfaction of the requirements of the Appellate Division decision that there not be a "significant mismatch between need and remaining vacant developable land."

RESPONSE: The methodology employed by the Council uses the most up-to-date data available to determine

vacant land available for development. As provided in COAH's rules, any municipality that believes its housing and employment projections cannot be met may request an adjustment from the Council pursuant to N.J.A.C. 5:97-5.6.

COMMENT: The "Analysis of Vacant Land in New Jersey and its Capacity to support Future Growth" does not appear to properly identify the CUPR Classification for each municipality. For example, Gloucester Township should be classified as a suburban community in Planning Area 1; the 4.61 dwelling unit per acre requirement is not a representative average of density throughout the municipality. Moreover, this density contradicts our municipal master plan, which reduced densities of the remaining vacant land to one and two dwelling units per acre and is an affront of the Planning Board's jurisdictional obligation to plan.

RESPONSE: COAH's consultants have been working with NJDEP to incorporate additional information with regard to increasing the size of certain stream buffers and refining where development may be permitted within floodplain areas, both of which are regulated by the Flood Hazard Control Act and recently amended regulations promulgated thereunder. In addition, they are updating the vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rule changes.

COMMENT: The "Analysis of Vacant Land and its Capacity to Support Future Growth" does not provide an adequate scientific basis for the proposed regulations. Of special concern to the N.J. Highlands Coalition are its deficiencies with respect to the Highlands Planning Area. According to the COAH Summary, page 238, "the Court directed the Council to review with the State Planning Commission or other reputable source the amount of vacant developable land in the State's growth areas." While the "Analysis of Vacant Land in New Jersey And Its Capacity to Support Future Growth" (Appendix F.1) seeks to provide a scientifically determined physical planning basis for the proposed rules, it excludes the most "reputable source" for the Highlands: the advanced data and analysis prepared by the Highlands Council for the Final Draft Highlands Regional Master Plan (RMP). Although the COAH vacant and available land analysis subtracts stream buffers (the Highlands Open Waters Protection Area) and slopes greater than 15 percent, it does not reflect other RMP constraints and land use restrictions in the Planning Area, including restrictions on development in agricultural areas, forested lands, and around lakes, consideration of impacts on historic, archaeological and scenic resources, and a more conservative nitrate dilution factor than used by the DEP to determine minimum lot size for septic systems. (3.4 of the Analysis of Vacant Land in New Jersey) Highlands Council analysis has also determined that many of the limited number of sewage treatment systems in the Region are near, at or already exceed capacity. (See Domestic Sewerage Facilities, Map 4 of 5, Final Draft RMP) In addition, detailed analysis of Highlands Sewer Service Areas has determined that much of these SSAs do not have pipes in the ground. This current, science-based data was not incorporated into the analysis of vacant land in the Highlands and its capacity to sustain development.

RESPONSE: Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, COAH's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The commenter should note, however, that the draft RMP will not take effect until Summer 2008 and municipal participation in the RMP is voluntary under the Highlands Water Protection and Planning Act. The consultants are further updating this data to incorporate the estimated impacts of pending DEP Water Quality Management/Wastewater Management Plan Rule changes, using the same methodology as being employed to revise development capacity estimates across the rest of the state. These lower development capacity estimates will be used by COAH's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole. The pending WQMP Rule will require that each of the 21 counties in the State develop a comprehensive long-term wastewater and water management plan to replace the 190 plans now in use, the overwhelming majority of which are out of date. These plans will be required to address any inconsistencies between build-out demand versus treatment capacity and water availability. Ultimately, these plans will inform the vacant land and development capacity analysis prepared by COAH.

COMMENT: The GIS-based mapping system offers a great deal of useful information in analyzing land use conditions, but it is not a substitute for human analysis and checks and balances. For example, why did the GIS

mapping program only use steep slopes as an environmental constraint in the Highlands? As a City of three "hills," the lack of a steep slope analysis immediately discredited the vacant land analysis for Lambertville, as any "eyeball" investigation would immediately show. For Lambertville, most of the "developable" lands shown on the Rutgers-generated shapefiles are either associated with planned residential development projects or are encumbered by steep slopes. Other purported buildable lands are located in a dedicated parkland and a restricted flood plain, with access severed by the presence of the D&R Canal.

RESPONSE: Although COAH's consultants used the DEP 2002 Land Use/Land Cover data, it used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP) and the Highlands Council. This included data on farmland preservation and purchases of open space by State, county, municipal and non-profit organizations made available to the Office of Smart Growth through the 2007. COAH, its consultants and representatives from the Office of Smart Growth and Department of Environmental Protection met in May 2007 to discuss potential sources of data that were available for the vacant land study and to identify all recently adopted or pending land use and environmental regulations that would be used as constraints on future development. Lands that were considered natural heritage priority sites, habitat for threatened and endangered species, undeveloped and unconstrained privately owned open space and forests, and steep slopes were all considered to be outside of these regulations except where specifically made part of the Highlands Act. The consultants have been working with NJDEP to incorporate additional information with regard to increasing the size of certain stream buffers and refining where development may be permitted within floodplain areas, both of which are regulated by the recently adopted Flood Hazard Control Act. In addition, they are updating the vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rules changes. DEP is currently reviewing its proposed changes to C-1 stream classifications, and could not make any updated spatial data available with regard to potential impacts. The Council further notes that municipalities seeking a vacant land adjustment may exclude steep slopes, from the vacant land inventory if the municipality adopts a steep slopes ordinance and regulates steep slopes uniformly throughout the municipality.

COMMENT: The municipality objects to both the residential and non-residential projections assigned to the City for this latest round of COAH obligations. The figures are grossly inadequate considering the City's environmental constraints and land availability. They also do not comport with the City's own experience of limited job growth and stagnant or slightly declining population numbers. The commenter looks forward to a revision of these figures. In this regard the City stands ready to provide the Council with any necessary figures that will reflect the true existing conditions in the City.

RESPONSE: A municipality that has a lack of vacant land to accommodate the COAH household and employment growth projections may seek a household and employment growth projection adjustment pursuant to N.J.A.C. 5:97-5.

COMMENT: It is very important that COAH works with DEP, the Highlands Council and other regional planning entities, counties and municipalities to update its growth projections and build-out analyses to take into account capacity constraints, new GIS data, updated build-out factors and refined methods on a routine basis (every other year).

RESPONSE: The Council agrees with the commenter and has taken great pains to work with the respective agencies named by the commenter both to understand their respective missions and to try and coordinate all of our individual policies and goals. The Council will continue to work with its sister agencies and regional planning entities going forward.

COMMENT: The procedures and methodology used in COAH's vacant land analysis are inconsistent with overall master planning and zoning at the municipal level and inconsistent with the SDRP Cross Acceptance process which provided municipalities, counties and the State the opportunity to coordinate overall planning for private residential and non-residential development, public facilities, natural resource protection and public park, recreation and open space.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture and Department of Environmental Protection (NJDEP). COAH with its consultants decided that continuing a municipality's land use distribution, as indicated in the Department of Environmental Protection's most recent land use/land cover spatial database, was a reasonable estimation of how land would continue to develop in the future. History has repeatedly shown that zoning does not always translate into actual development. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred and accurate data in the future. Furthermore, the commenter should note that the SDRP was last adopted in 2001 and the pending SDRP, which would incorporate the most recent round of cross-acceptance has not yet been adopted.

COMMENT: The Rutgers analysis relied upon inferior data to project vacant land. A few of the issues with the Rutgers analysis includes: Many of the remaining parcels in the southern portion of the Township lack proper access to roadways, have oddly shaped property and other factors which make them unusable or difficult to develop. There is no regard for property boundaries. For example the rear portion of a large lot may be counted as vacant and developable in the Rutgers analysis but in reality should not be counted due to the minimum lot size (zoning) of the property. This area should not be counted as developable land in the Rutgers analysis. The Rutgers land cover analysis appears to have included a 100-foot wetlands transition area adjacent to mapped freshwater wetlands, but did not include a wetlands transition area along "agricultural wetlands." While agricultural wetlands can continue to be farmed, a wetlands delineation and a transition area is required by the NJDEP on the upland portion if the agricultural lands are included in a development application.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture and Department of Environmental Protection (DEP). One key component, the Land Use/Land Cover database is based on 2002 orthophoto images of the State having a resolution of one acre. The analysis of that data required several years, and DEP did not release the GIS database until early 2007. COAH's consultants included a 100-foot transitional buffer around all wetlands identified in this DEP spatial database. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred and accurate data in the future.

COMMENT: The NCNBR analysis used 2002 NJDEP aerials to determine the extent of land that was already developed. This data is outdated, and in the case of municipalities in Burlington, Camden, Gloucester and Mercer Counties, their metropolitan planning organization, the Delaware Valley Regional Planning Commission, has 2005 aerial data. Also available is 2007 aerial data freely available through Google Earth. Since the NCNBR aerial was outdated, land that has been developed since 2002 has been included in the developable land classification. In this municipality's case, certain residential developments classified as vacant contain inclusionary components. Further, there are approved developments, one of which was the result of protracted litigation that precludes the use of this site for future residential development.

RESPONSE: COAH's consultants contacted and reviewed the data available from DVRPC and reviewed spatial data available from Google Earth, and in both instances found that it was not compatible with or contained the type of data required to model current and future land uses. The conversion of the State's 2002 orthophotos into DEP's current LU/LC database, which is based on Anderson Land Use Codes, required nearly three years to complete. With regard to inclusionary developments, COAH's rules provide that second round inclusionary developments constructed after

January 1, 2004 can be subtracted from projections of growth for the 2004 to 2018 time period.

COMMENT: Both the Department of Labor and Workforce Development projections and the vacant land analysis performed by the National Center for Neighborhood and Brownfields Redevelopment (NCNBR) at Rutgers University for COAH, which form the basis of COAH's projections, do not adequately take into consideration infrastructure capacity, as required by the Fair Housing Act. Specifically, sewer service availability and capacity do not appear to have been adequately considered and, therefore, render the growth projections inaccurate for municipalities that have significant sewer service limitations. COAH should adjust its projections to account for sewer service limitations or provide a means for municipalities to do so.

RESPONSE: The vacant land development capacity analysis prepared by COAH's consultants is an estimate of the maximum build-out potential of individual municipalities utilizing statewide spatial and other data. This analysis did not factor in potential water and wastewater capacity issues at the local level. Over the course of several meetings and discussions with the N.J. Department of Environmental Protection, they identified several wastewater treatment facilities that had current capacity constraints, others where expansion might be constrained in the future because of discharge stream conditions, and others that would have little or no problem with future expansions. Efforts were described as being underway to resolve several of the largest current capacity problems through repairs and improvements to old and damaged collection systems, upgrades and/or expansions of the sewage treatment plants themselves. These large investments will take several years to produce results, but when completed, the facilities would be able to meet projected build-out demand. Several other facilities could reach capacity over the near term if historical growth rates continue, and they will likely require costly upgrades in treatment technology, use of distributed treatment works, consideration of beneficial gray water reuse and other alternatives to meet long-term projected demand. Funds could be available through the New Jersey Environmental Infrastructure Trust, which has provided more than $ 4.3 billion in low interest long-term loans over the past 20 years to fund drinking water, wastewater and storm water projects. For these reasons, a more in-depth analysis is needed to determine the most cost effective and environmentally sound wastewater management alternative to meet potential long-term build-out demand. A further assessment will then be required to determine whether those costs can be sustained by the existing and future users of those facilities, consistent with the notion of providing "affordable" housing. This assessment is required through the development and adoption of wastewater management plans under the pending Water Quality Management Planning (WQMP) Rules. The pending WQMP Rule will require that each of the 21 counties in the State develop a comprehensive long-term wastewater and water management plan to replace the 190 plans now in use, the overwhelming majority of which are out of date. These plans will be required to address any inconsistencies between build-out demand versus treatment capacity and water availability. Ultimately, these plans will inform the vacant land and development capacity analysis prepared by COAH.

COMMENT: The data used to create the growth projections and land usage is outdated and flawed. Washington Township in Warren County is no longer a Town Center. The high growth areas and associated infrastructure were never implemented due to preservation efforts and economic factors.

RESPONSE: COAH's consultants used residential development densities within sewer service areas that were either the community's average existing density or the median of similar communities in its geographic area. Densities outside of sewer service areas were based on the DEP's septic density standards. Non-residential densities were developed similar to residential. The consultants are updating their vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rules changes. However, it may be necessary for municipalities to accommodate affordable housing obligations through center-based development.

COMMENT: Once the data was layered through GIS to identify the vacant developable land within the municipality, no check was evidently made to sample or verify that the lands identified were, in fact, vacant developable lands. The data lacks any tax parcel layer to define the limits of existing developed parcels. Consequently, the NCNBR data identifies as vacant developable land features of developed lots such as, but not limited to, yard areas,

landscaped buffers, common open space areas, State highway rights-of-way, and landscaped islands. The data is inaccurate as to the location of lands in our municipality that are vacant and remain available for further development.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture and Department of Environmental Protection (NJDEP). One key component, the Land Use/Land Cover database is based on 2002 orthophoto images of the State having a resolution of one acre. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this data in the future.

COMMENT: The rules offer no opportunity to reconcile future development opportunity and resulting affordable obligation against significant environmental constraints. While this municipality is 58 square miles in land area, 72 percent of that area is constrained by C-1 waterways, poor soils, limited groundwater resources, and large areas of mountainous land. The municipality does not own or operate wastewater treatment facilities making it unable to address developments requiring 2,000 gallons of treatment or more per day. Township zoning, which has been upheld by the Superior Court, is based on water resources protection and nutrient dilution. A more accurate vacant land analysis, coupled with an analysis of available sewer infrastructure, is required to provide a realistic assessment of growth potential.

RESPONSE: COAH's consultants used the most currently available spatial data in its analysis of vacant land and removed all wetlands, C-1 stream buffers, and other regulated environmental features. They have been working with DEP to incorporate additional information with regard to increasing the size of certain stream buffers and refining where development may be permitted within floodplain areas, both of which are regulated by the recently adopted Flood Hazard Control Act. In addition, they are updating the vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rule changes. The pending WQMP Rule will require that each of the 21 counties in the State develop a comprehensive long-term wastewater and water management plan to replace the 190 plans now in use, the overwhelming majority of which are out of date. These plans will be required to address any inconsistencies between build-out demand versus treatment capacity and water availability. Ultimately, these plans will inform the vacant land and development capacity analysis prepared by COAH.

COMMENT: The GIS spatial datasets and method used by the consultant in conducting the vacant land analysis are much more appropriate for regional and Statewide analyses than for municipal allocations of growth. Inaccuracies in the datasets and methods become much more apparent when applied at the local level.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture and Department of Environmental Protection (NJDEP). One key component, the Land Use/Land Cover database is based on 2002 orthophoto images of the State having a resolution of one acre. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred and accurate data in the future.

COMMENT: The Third Round rules include population and employment projections that do not reflect our local experience and consequently substantially over-estimate growth, thereby resulting in a substantially greater affordable

housing obligation than that which should be imposed on the Township. Our review of the background data, including a preliminary review of the information that was posted on your website on the afternoon of March 14, 2008, also indicates that the COAH consultants' assessment of vacant land and the assumptions they used to determine their projections is flawed in many respects. This includes the fact that a substantial portion of our Township's remaining undeveloped land is located in the Highlands Preservation Area; the Consultant data does not seem to reflect the fact that this land is effectively unavailable for development.

RESPONSE: Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, COAH's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The consultants are further updating this data to incorporate the estimated impacts of pending DEP Water Quality Management/Wastewater Management Plan Rules changes, using the same methodology as being employed to revise development capacity estimates across the rest of the State. These lower development capacity estimates will be used by COAH's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole. Residential development capacity in the Preservation Area is largely the result of the availability of exemptions for hundreds of small grandfathered lots.

COMMENT: The commenter requests that COAH provide the background information used to formulate the housing and employment projections for each municipality and afford sufficient time to review and assess the material. COAH did release additional data (on Friday afternoon, March 14, 2008). Unfortunately, the timing of the data's release did not permit a thorough review and analysis of same with our municipal client. On behalf of Mahwah, the commenter requests that COAH provide additional time for review and comment on the data that was released on March 14th.

RESPONSE: COAH made information available on its website for the convenience of the public after it received several OPRA requests for the information. Although the Council could not extend the comment and response period because of the Court's deadline of June 2, 2008 for adopting revised third round rules, the municipality may contact the Council with questions or submit information regarding their parcel level data as necessary when they petition for certification.

COMMENT: The data that COAH has relied upon generates gross error that overstates the current supply of vacant developable land and the planned use of the vacant developable land. As a result of data error, COAH calculates that the vacant developable land in several municipalities today is substantially greater today than what was determined as vacant developable land in COAH or Court-approved vacant land adjustments previously granted.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture and Department of Environmental Protection (NJDEP). Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a statewide basis in several years, and it hopes to use this data in the future. COAH's Third Round rules provide a mechanism for municipalities to seek a growth projection adjustment based on lack of available land. Further, the Council will not consider the land that was previously utilized in calculating a second round vacant land adjustment as vacant for the purposes of calculating a Third Round growth projection adjustment.

COMMENT: The dataset lacked any tax parcel layer to define the limits of existing developed parcels. Consequently, COAH has identified as vacant developable land the features of developed lots such as, but not limited to, yard areas, landscaped buffers, common open space areas, utility rights-of-way, street rights of way, landscaped islands, cemeteries, retention facilities, school lands, recreation maintenance facilities, church properties, and municipal composting facilities.

RESPONSE: Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this data in the future.

COMMENT: The Analysis of Vacant Land in New Jersey is inconsistent with references to both the State Plan and the Draft State Plan Policy Map. Was the Draft State Plan Policy Map used only where specifically referenced? The negotiated removal of Planning Area 2 from Hunterdon County and the changes resulting from the Environmental Update significantly reduce developable land and diminish the County's capacity to support future development and must be reflected in the development capacity analysis.

RESPONSE: COAH's consultants were provided with the most currently available version of the State Plan Policy Map by the Office of Smart Growth in June 2007, and recent discussions with OSG indicate that this map is still the most current. The consultants have also been working with DEP to incorporate additional information with regard to increasing the size of certain stream buffers and refining where development may be permitted within floodplain areas, both of which are regulated by the recently adopted Flood Hazard Control Act. In addition, they are updating the vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rules changes.

COMMENT: While growth assumptions have been made to estimate development potential, no adjustments have been made to reflect the ongoing aggressive farmland and open space preservation efforts that will continue within Hunterdon County for many years. Since 2003, Hunterdon County has preserved more than 900 acres of open space which is not reflected on the NJDEP 2002 Land Use Land Cover data or in the Vacant Land Analysis.

RESPONSE: COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection and New Jersey Highlands in estimating vacant land and its development capacity. This included 2007 data on open space. This included data on farmland preservation and purchases of open space by State, county, municipal and non-profit organizations made available to the Office of Smart Growth through 2007. Updates are being made to the vacant land analysis to include these datasets for 2008. None of these lands were treated as vacant and available for development.

COMMENT: In 2005, as part of the State Planning required cross acceptance process, involving countless volunteer and professional human resource hours and taxpayer dollars, Hunterdon County prepared a countywide build-out analysis incorporating local knowledge of individual site limitations. The 2018 municipal housing unit projections contained in the Task 1 report exceed our calculated total build-out projections for 15 of Hunterdon County's 26 municipalities. These Task 1 build-out numbers must be re-examined locally using a similar cross acceptance review process.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture and Department of Environmental Protection (NJDEP). One key component, the Land Use/Land Cover database is based on 2002 orthophoto images of the State having a resolution of one acre. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred and accurate methodology in its next five year review. The Third Round rules provide a mechanism for municipalities to request a

vacant land revision if they feel that COAH's estimates are inaccurate. However, it is important to consider that COAH's growth estimates for the period 2004 through 2018 begin with the utilization of land use capacity estimates as of 2002. Actual and planned development since 2002 and 2004 may account for a good portion of the growth that COAH estimated would occur out to 2018. This is important to consider when comparing current (2008) land availability and development capacity to COAH estimates that start in 2002 or 2004.

COMMENT: Our municipality is being required to plan for affordable housing based upon growth that is unlikely to occur, since COAH has used a flawed approach in calculating prospective growth. The areas of the Township that are served by public utilities are substantially developed and it is not, therefore, physically possible for the COAH calculations of prospective growth to be achieved at this point in our municipality's history.

RESPONSE: COAH's consultants have been working with DEP to incorporate additional information with regard to increasing the size of certain stream buffers and refining where development may be permitted within floodplain areas, both of which are regulated by the recently adopted Flood Hazard Control Act. In addition, they are updating the vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rules changes. The Third Round rules provide a mechanism for municipalities to request a growth projection adjustment if they believe that they have insufficient vacant land.

COMMENT: The projections completed by COAH's consultants do not utilize the most accurate and reliable information available. COAH's consultants did not use information, such as municipal zone districts and zoning regulations, to inform the build-out analysis. Instead, residential densities were calculated using the New Jersey State Department of Environmental Protection's nitrate dilution model, and the non-residential densities were calculated using a methodology that projects the permitted floor area based on a function of the residential density.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture and Department of Environmental Protection (NJDEP). One key component, the Land Use/Land Cover database is based on 2002 orthophoto images of the State having a resolution of one acre. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this dataset in the future. The Council believes that use of DEP's nitrate dilution model provides a more accurate basis for determining the development capacity of vacant land than local zoning.

COMMENT: State planning policy does not support the intensive development that would be required to fulfill COAH's non-residential Projections in the Planning Areas which this municipality is designated. It should be noted that while the State Plan promotes the creation of Centers to accommodate growth, this municipality does not contain any centers and thus COAH's projections did not utilize intensities appropriate for center-based growth.

RESPONSE: COAH's consultants used residential development densities within sewer service areas that were either the community's average existing density or the median of similar communities in its geographic area. Densities outside of sewer service areas were based on the DEP's septic density standards. Non-residential densities were a similar to residential. The consultants are updating their vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rules changes.

COMMENT: Washington Township in Warren County is not served by any local mass transit such as bus lines, cabs or trains to facilitate new affordable housing population getting to and from work. There are not significant sources of local employment to serve the projected growth share affordable housing employment needs. The commenter does not believe the vacant developable land projections reflect these limiting factors.

RESPONSE: The vacant land analysis prepared by COAH's consultants is an estimate of the municipality's potential development capacity based on its vacant land, current land use patterns and current residential densities.

COMMENT: COAH should update municipalities' housing unit and employment projections and resulting third round obligations to reflect the impact of the proposed DEP Water Quality Management Planning Rule amendments.

RESPONSE: Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, COAH's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The consultants are further updating this data to incorporate the estimated impacts of pending DEP Water Quality Management/Wastewater Management Plan Rules changes, using the same methodology as being employed to revise development capacity estimates across the rest of the State. These lower development capacity estimates will be used by COAH's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole.

COMMENT: Undeveloped lands in Planning Areas 3, 4 or 5 without sewer service should be excluded from the tally of vacant land which can support the statewide affordable housing need. Due to their rural character and environmental sensitivities, these lands should not be encouraged to support the State's future growth. Instead, only lands in Planning Area 1, 2 and centers should be considered in the vacant land analysis. Additionally, due to their distance from jobs and services and the maintenance costs associated with upkeep of a large property, these lands are not appropriate for affordable housing.

RESPONSE: The *Mount Laurel* decisions and the FHA make clear that every municipality has a constitutional obligation to provide for its fair share of the regional need for affordable housing. While COAH prefers affordable housing developments to be located in PA 1, 2 or centers, COAH does not believe it would be appropriate to eliminate all lands outside of these areas from an analysis of vacant, developable land or and affordable housing obligation, particularly as the State agencies, such as DEP, that regulate use of the land would permit development on these lands. Further, the commenter should note that the MOU between the SPC and COAH, dated July 13, 2004, states, "All planning areas can accommodate growth and therefore can accommodate a commensurate affordable housing obligation in a manner consistent with the goals, objectives, and policies of the State Plan."

COMMENT: The rules impose an unfair burden on those municipalities that are either fully-developed or nearly fully-developed, and cannot accommodate substantial additional development without adversely affecting the character of the community and the carrying capacity of the land. COAH's vacant land analysis shows available vacant land when, in fact, these municipalities are at or near capacity.

RESPONSE: Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this data in the future. COAH's Third Round rules provide for each municipality to request a growth projection adjustment if the municipality can demonstrate a lack of available, developable land.

COMMENT: COAH should have used MOD IV Data. MOD IV parcel data, which is widely used by counties and municipalities in their planning, was not available for COAH's Vacant Lands Study, despite the fact that it "...would have indicated the development status of these (non-exempt) parcels."

RESPONSE: Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. Accurate MOD IV data is less available and

has often been found to be inaccurately and inconsistently prepared even across counties. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred and accurate data in the future.

COMMENT: Lafayette Township is a rural community in Planning Areas 4 and 5 with less than 5 percent served by public water and sewer and no planned extension of these areas. Despite the fact that the State labeled us a "Highlands Growth Area," we do not plan or wish to designate a Town Center or lose our historic rural character. In fact, in 2007, we initiated the application process for Historic District Designation for our downtown commercial area. The non-residential growth projected in the proposed Third Round rules contradicts our local planning strategy and is grossly inaccurate. COAH consultants should reexamine the assumptions and variables used to calculate non-residential growth in Lafayette Township and other rural areas in New Jersey.

RESPONSE: Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, COAH's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The consultants are further updating this data to incorporate the estimated impacts of pending DEP Water Quality Management/Wastewater Management Plan Rules changes, using the same methodology as being employed to revise development capacity estimates across the rest of the State. These lower development capacity estimates will be used by COAH's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole. However, it may be necessary for municipalities in growth areas to accommodate affordable housing obligations through center-based development.

COMMENT: In carrying out the their duties, the Fair Housing Act charges COAH with giving appropriate weight to pertinent research studies, government reports, decisions of other branches of government, and the State Plan in determining present and prospective need. Appendix F of the proposed rules relies on two primary sources of information to determine prospective need - the Econsult Report which allocates each municipalities growth based on projected increases in household and employment through 2018, and the NCNBR Report which estimates whether there is sufficient land and capacity to support the growth envisioned in the rule. Section 4.7 of the NCNBR Report it states that they "did not use water and wastewater treatment capacity data to evaluate whether the vacant land capacity estimates ... generate water demand that exceeds the capacity of the local provider or ground water resource, or effluent flows that exceed the treatment capacity of any sewer service area." Therefore, COAH has not yet determined that there is sufficient infrastructure capacity available to support the growth envisioned in the proposed rules, as required by the Fair Housing Act. The growth projections in the proposed rules did not allow for the preservation of historic resources; did not allow for adequate provisions for recreational, conservation or agricultural and farmland preservation purposes; did not use the most current information available in the State Plan; and did not determine if there was adequate public facilities and infrastructure capacities available to support the growth envisioned in the rules despite the fact that there were numerous "pertinent research studies (and) government reports" available to COAH prior to the rule proposal date. As a result, the growth projections included in the rule are artificially inflated because the rules are based on projections that do not address the requirements of the Fair Housing Act to establish present and prospective need according to infrastructure capacity, as well as, environmental and historic preservation factors.

RESPONSE: COAH's consultants met with the N.J. Department of Environmental Protection to discuss possible capacity limitations on wastewater treatment facilities. They identified several facilities that had current capacity constraints, others where expansion might be constrained in the future because of discharge stream conditions, and others that would have little or no problem with future expansions. Efforts were described as being underway to resolve several of the largest current capacity problems through repairs and improvements to old and damaged collection systems, upgrades and/or expansions of the sewage treatment plants themselves. These large investments will take several years to produce results, but when completed the facilities should be able to meet projected build-out demand. Several other facilities could reach capacity over the near term if historical growth rates continue, and they will likely require costly upgrades in treatment technology, use of distributed treatment works, consideration of beneficial gray water reuse and other alternatives to meet long-term projected demand. Funds could be available through the New

Jersey Environmental Infrastructure Trust, which has provided more than $ 4.3 billion in low interest long-term loans over the past 20 years to fund drinking water, wastewater and storm water projects. For these reasons, a more in-depth analysis is needed to determine the most cost effective and environmentally sound wastewater management alternative to meet potential long-term build-out demand. A further assessment will then be required to determine whether those costs can be sustained by the existing and future users of those facilities, consistent with the notion of providing "affordable" housing. This assessment is required through the development and adoption of wastewater management plans under the pending Water Quality Management Planning (WQMP) Rules. The pending WQMP Rule will require that each of the 21 counties in the State develop a comprehensive long-term wastewater and water management plan to replace the 190 plans now in use, the overwhelming majority of which are out of date. These plans will be required to address any inconsistencies between build-out demand versus treatment capacity and water availability. Ultimately, these plans will inform the vacant land and development capacity analysis prepared by COAH. COAH's consultants used the most currently available State Plan Policy Map and spatial data on open space and preserved farms available from the Office of Smart Growth and Department of Agriculture. Individual municipalities are permitted to identify proposed future acquisitions in preparing their COAH affordable housing plan for certification.

COMMENT: The Highlands Council has demonstrated in its water availability analysis that at least 114 of the 183 HUC-14 sub-watersheds in the Highlands are already in deficit, and thus lack sufficient capacity to support additional growth. (Land Use Capability Map 2, Final Draft RMP, and Technical Report Addenda, pages 28-31.) Highlands Council analysis has also determined that many of the limited number of sewage treatment systems in the Region are near, at or already exceed capacity. (See Domestic Sewerage Facilities, Map 4 of 5, Final Draft RMP) In addition, detailed analysis of Highlands Sewer Service Areas has determined that much of these SSAs do not have pipes in the ground. This current, science-based data was not incorporated into the analysis of vacant land in the Highlands and its capacity to sustain development.

RESPONSE: Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, COAH's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The consultants are further updating this data to incorporate the estimated impacts of pending DEP Water Quality Management/Wastewater Management Plan Rules changes, using the same methodology as being employed to revise development capacity estimates across the rest of the State. These lower development capacity estimates will be used by COAH's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole. However, the commenter should note that the draft RMP is not scheduled to be adopted until Summer 2008.

COMMENT: These projections do not give adequate weight or consideration of the factors enumerated in the Fair Housing Act, including: the projections do not account for the preservation of historic resources; the projections are not consistent with the State Plan; the projections do not provide adequate provisions for open space for recreational; conservation or agricultural and farmland preservation purposes; the projections do not acknowledge the limitation in infrastructure capacity; and the projections do not give appropriate weight to pertinent research studies, government reports, decisions of other branches of government. Prior to rule adoption, COAH should clarify the discrepancy between projected increases in household and employment when compared with comparable data available from the State Plan and N.J. Department of Labor and Workforce Development. In addition, COAH should explain what the likely affect will be to household and employment projections included in the proposed rules if all the factors for determining present and prospective need enumerated in the Fair Housing Act are taken into consideration.

RESPONSE: The section of the Fair Housing Act referred to by the commenter relates to criteria for granting various adjustments and has been taken into consideration in N.J.A.C. 5:97-5. The commenter is referring to how the Council has derived its projections, which is distinct from how adjustments to those projections are determined. Further, the Council and the State Planning Commission have been working together to ensure consistency in their processes while the State Plan is being updated.

COMMENT: The population and employment projections are not founded in realistic population and employment

projection techniques. The date is based on N.J. Department of Labor and Workforce Development data, as well as census data, land capacity analysis from Rutgers based on NJDCA, NJDEP and NJDA spatial data. None of the data is based on zoning and property ownership information. COAH used average densities for an area rather than local planning and zoning. The process was a top down allocation and re-allocation from State to county to municipality of growth projections based on Labor and Workforce Development statistics, out of date census figures and macro level land capacity analyses. The projections generated are then used as the basis for the planning projections that each municipality must use. The approach should be bottom up, not top down, relying on local zoning, land use and property ownership analysis to determine a much more accurate and realistic projection of growth coupled with regular and periodic review and oversight to track actual growth and the production of affordable housing commensurate with that growth.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture and Department of Environmental Protection (NJDEP). COAH, with its consultants, decided that continuing a municipality's land use distribution, as indicated in the Department of Environmental Protection's most recent land use/land cover spatial database, was a reasonable estimation of how land would continue to develop in the future. History has repeatedly shown that zoning does not always translate into actual development. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred and accurate data in the future. In addition, reliance on municipal zoning, land use and historical property ownership patterns, may not be an appropriate set of conditions on which to predicate growth projections that are to be used for the purposes of identifying growth areas in which affordable housing opportunities must be captured.

COMMENT: One of the concerns the commenter has about the current proposal is the methodology used for determining affordable housing obligations for each town. These numbers are based on existing land use patterns, rather than on zoning, so the numbers are unrealistically high in some places, especially in rural areas and the Highlands. For example, Ringwood has an obligation of 120 under the new rules; however, Ringwood is in the Highlands Preservation Area and is currently averaging only eight to 10 units of new housing per year. To meet a goal of 120 would not only be an extremely heavy burden on the town; it would go against the purpose of the Highlands Preservation Area, which is to control sprawl and development in order to protect the drinking water that supplies more than half the population of New Jersey. These numbers need to be recalculated based on a reasonable expectation of future growth.

RESPONSE: Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, COAH's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The consultants are further updating this data to incorporate the estimated impacts of pending DEP Water Quality Management/Wastewater Management Plan Rule changes, using the same methodology as being employed to revise development capacity estimates across the rest of the State. These lower development capacity estimates will be used by COAH's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole. Residential development capacity in the Preservation Area is largely the result of the availability of exemptions for hundreds of small grandfathered lots.

COMMENT: With the current housing market downturn, "filtering" will be much more common and this should be adequately reflected in the proposed regulations. Increased filtering because of economic conditions will mean that more affordable units already will be located in downtown districts and additional redevelopment potential must be explored before promoting growth-share in the suburbs. Filtering provides a great opportunity to meet a town's obligation.

RESPONSE: The degree to which a filtered unit is considered "affordable" is done by applying COAH's income guidelines to the price of a filtered unit. Units which either filter up or have filtered down but remain unaffordable are not counted as increasing the supply of affordable housing. Moreover, there is nothing in the research's guidelines that mandate differentiation between units that have filtered to moderate income households versus low income households.

COMMENT: COAH has allocated a negative 157 residential growth number to Princeton Borough. Why has COAH included a negative number? Is there any significance to this number? Does it mean that up to 157 residential demolitions may be subtracted from the residential projections? COAH should explain this calculation.

RESPONSE: Pursuant to N.J.A.C. 5:97-2.4(a), "the residential growth share obligation shall not go below zero." Therefore, for the purposes of projecting residential growth, the Borough would use a residential growth projection of zero.

COMMENT: There are number of flaws with the allocation of growth to municipalities. It appears from the report that the consultants used a very narrow window prior to 2002 in which to evaluate growth occurring in municipalities. They then projected on a straight line basis to 2018, to determine housing and job projections for that year. They specified the housing and jobs based on the straight line projection growth for 2004, and simply took the difference between 2004 and 2018. The problem is that there were regional and State regulatory and statutory impacts which affect growth subsequent to the narrow window of review, a straight line of progression does not allow for fluctuations in the market such as now being realized in an economic downturn, and in reviewing periods of high growth, many of the projections are overstated. For instance, municipalities that are totally within the preservation zone of the Highlands are being assigned large growth allocations. Apparently, no proofing of the consultant's model was done against actual certificates of occupancy issued between 2004 and 2007, otherwise the allocation of municipal growth would have been more reflective of what has actually happened since 2004.

RESPONSE: As indicated in the report, the forecast model allocates countywide projected growth among all the municipalities in a county. The model projects growth for each municipality based on historic growth rates, including consideration of how close to build-out the municipality is, subject to the constraint that growth in all the municipalities in a county must sum to the projected county control total. The municipal level projections sum to the county totals because the county totals are the best available long term employment and housing projections available for the whole state. However, these projections are only available at the county level, and not the municipal level. There are instances in which there is insufficient land in the municipality to accommodate all the projected growth. In these instances, the growth beyond what the municipality can accommodate spills over into neighboring municipalities. The projections from the allocation model reflect patterns of municipal growth as observed in the past tempered by the amount of vacant land available for future development. The growth projections will be updated in the near future based on municipal level housing and employment growth observed over the period from 1993 through 2006. The municipal-level housing data will be updated through 2006 using certificate of occupancy information and information on demolitions, and employment data will be updated using 2006 data from the New Jersey Department of Labor and Workforce Development. The sample period is long enough to capture both periods of strength and weakness in the local economies and the projected growth is consistent with patterns observed in the past. The growth forecast uses "S-curves," which account for the relationship between a municipality's growth rate and how close to build-out the municipality is. Growth rates slow as a municipality approaches its build-out constraint. COAH's revised methodology will calculate S-curves for each COAH region for both housing and employment based on the 1993-2006 historic growth, and capacity limits based on revised estimates of vacant, developable land, taking into account the new DEP Water Quality Management Rules. The commenter should note that these growth projections are long-term projections, and they may run counter to short-term growth trends experienced by a municipality. Several municipalities have indicated that they believe they have significantly less development capacity than the amount ascribed to them in the proposed regulations. The amount of development capacity for each municipality was determined using a consistent, statewide method. This method will be updated in a future rule amendment to specifically include consideration of the Highlands Act and the new DEP Water Quality Management Rules. Growth constraints will also be updated and incorporated into the latest projections.

COMMENT: COAH's consultants distributed projected county growth to individual municipalities. This was accomplished by modifying the constant-share allocation method by the introduction and use of the National Center for Neighborhood and Brownfields Redevelopment (NCNBR) vacant land analysis. The following needs to be addressed with respect to their procedure: (a) Under step 1, described on page 12 of the Econsult Corporation report, "When the sum of growth exceeds the county totals, the projections are proportionately scaled down." However, there is no explanation as to how the projections are proportionately scaled down or the basis for doing so. More to the point, this does not take into account the fact that such a reduction may be warranted for some towns, and other towns may not get the full benefit of a reduction that they are truly entitled to. This runs counter to the desire to have a true determination of a community's growth share. (b) The step that addresses the "spillover" effect is also problematic. The report states that if a municipality is projected to grow beyond its physical growth capacity, the "spillover" is sent to any adjacent municipality(s) whose growth has not reached its growth capacity. This assumes that all adjoining municipalities are uniformly desired and priced, while in reality this is not the case. For example, households may be precluded by housing values from locating in certain towns. The COAH model does not take into account this fact; the result is that the excess "spillover" units are misallocated, to the detriment of some municipalities who will not experience the growth that they are being allocated.

RESPONSE: As indicated in the report, the forecast model allocates countywide projected growth among all the municipalities in a county. The model projects growth for each municipality based on historic growth rates, including consideration of how close to build-out the municipality is, subject to the constraint that growth in all the municipalities in a county must sum to the projected county control total. The municipal level projections sum to the county totals because the county totals are the best available long term employment and housing projections available for the whole State. The Projections are scaled according to housing or employment stock. The scaling is done because the purpose of the allocation mode is to prepare municipal projections that sum to the county control total. There are instances in which there is insufficient land in the municipality to accommodate all the projected growth. In these instances, the growth beyond what the municipality can accommodate spills over into neighboring municipalities. Spillovers are assigned to the nearest municipality with available capacity.

COMMENT: COAH should recalculate the municipal housing and employment projections to reflect the impact of the Highlands Water Protection and Planning Act and the Final Draft of the Highlands Regional Master Plan. COAH should also account for the very limited capacity for growth in the "Highlands Planning Area" for towns who opt-in to the Regional Master Plan. Failure to do so will result in significant overestimates of growth in these areas, since COAH's consultants assumed that even these lands would continue to develop according to historic growth patterns, not the current zoning laws and especially the upcoming Highlands RMP restrictions on development.

RESPONSE: Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, COAH's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The consultants are further updating this data to incorporate the estimated impacts of pending DEP Water Quality Management/Wastewater Management Plan Rule changes, using the same methodology as being employed to revise development capacity estimates across the rest of the State. These lower development capacity estimates will be used by COAH's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole. However, the commenter should note that the draft RMP is not scheduled to be adopted until Summer 2008 and that participation in the RMP is voluntary under the Highlands Act.

COMMENT: The allocation of vacant developable land to residential land use and commercial land use at the municipal level is not based on any meaningful data as to the how the land is actually planned to be used. This lack of data is a fundamental flaw in the land allocations that COAH calculated for residential and commercial land use.

RESPONSE: COAH, with its consultants, decided that continuing a municipality's land use distribution, as indicated in the Department of Environmental Protection's most recent land use/land cover spatial database, was a reasonable estimation of how land would continue to develop in the future. History has repeatedly shown that zoning

does not always translate into actual development.

COMMENT: COAH should recalculate the housing and employment projections using the correct OSG Planning Area boundaries as they have been re-delineated during the cross-acceptance III process.

RESPONSE: COAH's consultants were provided with the most currently available version of the State Plan Policy Map by the Office of Smart Growth in June 2007, and recent discussions with OSG indicate that this map is still the most current.

COMMENT: The existing vacant land and open space within the Township of Wyckoff can be organized in several categories: (1) protected water shed property which is not developable and owned by the Ridgewood Water Company; (2) protected parks and recreational fields owned by the Township of Wyckoff and County of Bergen, which is not developable and should be excluded from potential growth pursuant to COAH's rules and regulations; (3) property consisting of wetlands and/or steep slopes, which is environmentally constrained and not developable; and (4) properties which are already inclusionary sites as part of the Township's approved Second Round Plan. In fact, after excluding property used for parks and recreation, protected watershed properties, and properties already included as affordable housing sites within Wyckoff's current zoning ordinance, only one buildable vacant property exists within the entire municipality. Such property is only three acres in size, is directly adjacent to railroad tracks and is zoned for commercial use. Clearly, the sole remaining existing vacant site is not capable of producing the 571 units projected by COAH through 2018. COAH must recalculate Wyckoff's projected growth share based on the actual numbers realized between 2004 and 2008, as well as the actual vacant land available for such growth. Finally, Page 49 of Appendix F, Allocating Growth to Municipalities, projects 790 additional jobs in Wyckoff by 2018. The lack of vacant land and potential growth proves such projection to be an impossibility.

RESPONSE: The Council's growth estimates for the period 2004 through 2018 begin with the utilization of land use capacity estimates as of 2002. Actual and planned development since 2002 and 2004 may account for a good portion of the growth that the Council estimated would occur out to 2018. This is important to consider when comparing current (2008) land availability and development capacity to COAH estimates that start in 2002 or 2004. The Third Round rules provide a mechanism for municipalities to request a vacant land revision if they feel that COAH's estimates are inaccurate.

COMMENT: The GIS spatial layers, build-out factors and tabulated build-out results for each municipality that forms the basis of the December 31, 2007 report entitled "Analysis of Vacant Land in New Jersey and its Capacity for Growth" prepared for COAH should be made available for municipal and county review on CD in GIS format. It is important that municipalities have the opportunity to verify the spatial data representing available developable land, and to identify appropriate corrections to this dataset, as well as review the appropriateness of the density factors applied to these lands when calculating build-out.

RESPONSE: The Council has provided the requested information on its website.

COMMENT: It is not clear as to how the vacant land analysis was actually incorporated into the methodology. It appears that Econsult did a straight line projection of growth based on a very narrow window of time prior to 2002, and then simply looked at the vacant land analysis to determined there was sufficient vacant land to support the growth. There does not appear to be any detailed analysis in the Econsult reports, or the methodology overall, that actually determines, in any credible way, that sufficient vacant land exists in municipalities to support the projected growth.

RESPONSE: The model directly incorporates the amount of vacant, developable land as an input to its calculations. Specifically, the amount of vacant land is converted into potential new housing units and potential new employment. The number of potential new units (or jobs) is added to the number of existing units (or jobs) to determine how close to build-out each municipality is. This percentage of build-out is used in the "S-curves" for growth projections, in addition to the historic growth rates.

COMMENT: The build out model could not have taken into account the new NJDEP extensive riparian buffer regulations adopted in November of 2007.

RESPONSE: The Council did in fact take this into account. The Council's consultants have been working with NJDEP to incorporate additional information with regard to increasing the size of certain stream buffers and refining where development may be permitted within floodplain areas, both of which are regulated by the recently adopted Flood Hazard Control Act. In addition, they are updating the vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rules changes.

COMMENT: COAH should not presume that land is developable if the land is not in a sewer service area. Furthermore, the NJDEP, charged with safeguarding the environment of our State, strongly discourages package treatment plants and other such "alternative treatment processes."

RESPONSE: COAH's consultants have been working with NJDEP to incorporate additional information with regard to increasing the size of certain stream buffers and refining where development may be permitted within floodplain areas, both of which are regulated by the recently adopted Flood Hazard Control Act. In addition, they are updating the vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rule changes. DEP has granted more than 100 permits for small and innovative technology wastewater treatment plants and is actively working with the Pinelands Commission to test the use of individual innovative septic treatment units on one-acre residential parcels. COAH believes that such technology can be safely applied to provide affordable housing in other parts of the State. The pending WQMP Rules will require that each of the 21 counties in the State develop a comprehensive long-term wastewater and water management plan to replace the 190 plans now in use, the overwhelming majority of which are out of date. These plans will be required to address any inconsistencies between build-out demand versus treatment capacity and water availability. Ultimately, these plans will inform the vacant land and development capacity analysis prepared by COAH.

COMMENT: In *AMG Realty Co. v. Warren Township*, 207 *N.J. Super* 388, 433, 453 (Law Div. 1984), Judge Serpentelli advocated that any reasonable methodology must have at its keystone three ingredients: reliable data, as few assumptions as possible, and an internal system of checks and balances." Therefore, COAH must examine the NJDLWD data utilized to determine if it is as reliable as the data available from municipalities. If the data available from individual municipalities is superior, then COAH should provide the municipal growth share data with and the resulting growth share projections with a presumption of validity instead of the NJDLWD data and COAH projections.

RESPONSE: In *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007) the New Jersey Appellate Division stated that, "If municipalities with substantial amounts of vacant land and access to infrastructure can decide for themselves whether and how much to grow, it is highly likely that housing opportunity will fall far short of identified housing need." *Id.* At 56. With this, the Court placed two limitations on the previous growth share approach the Council took which relied on municipally derived projections: the growth share methodology must contain a sufficient check on municipal discretion in adopting a master plan and zoning ordinance; and the growth share methodology must be based on data from which it can reasonably be concluded that the allocation formula will result in satisfaction of the statewide and regional needs. Therefore, the revised growth share approach relies in part on independent household and employment growth projections, which each municipality will utilize in its long range planning for affordable housing. In order to respond to the Court's concerns, the Council determined that an adjustment to these projections should only be warranted by lack of available land capacity and not by factors that are within the municipality's control, a process similar although not identical to the vacant land adjustment process. The commenter should further note that while other projections exist, including Metropolitan Planning Organization (MPO) projections and those provided by the SDRP, the population and employment projections provided by the NJDLWD were chosen to provide the county control totals for population and employment for several reasons. First, there is a common methodology for forecasting population and employment for all New Jersey counties. Methodological and data consistency is the primary concern in choosing a set of projection

data that applied uniformly across the state. Since the NJDLWD projection models have built-in connection of population and economic changes, the projection method is not only consistent across geography but across sectors. The NJDLWD approach provides a consistent methodology in its projection of county population and employment by industry (work place based).

COMMENT: Currently NJDEP, in coordination with the recommendations of the State Plan, does not permit new sewage treatment plants within Planning Areas 3, 4 or 5, except within designated "centers." What is needed is for an exception from DEP to allow a limited number of new sewage treatment plants in Planning Areas 3, 4 and 5 without the necessity for a change in planning area designation or center designation. The exception should be limited to new package treatment plants serving only relatively small developments (that is, no more than 50 units) of 100 percent affordable housing units, and with a further restriction that no more than four such treatment plants be permitted. Without such an exception from DEP rules, and assuming that center designation is not appropriate within all municipalities, many municipalities without any or sufficient sewage treatment facilities will not be able to create a reasonable opportunity for the construction of the affordable housing units required by COAH's proposed new rules. Additionally and in concert with the recommendations of the State Plan, DEP has continued to adopt new rules to protect the environment from negative impacts stemming from development. Many tributaries to Class I waterway now are required to be protected by a 300-foot wide buffer which limits or erodes the ability to develop the affected land for affordable housing. Balancing the sometimes competing public purpose interests of protecting environmentally sensitive areas as required by DEP rules and providing for affordable housing as required by COAH's rules must done at the State level through departmental coordination. During recent years, there has been a lot of talk at the State level of government promising that the various State departments and agencies will have their rules coordinated so that all affected parties, including municipalities and developers, would not face conflicting rules when attempting to effectuate State mandates and policy objectives. COAH's proposed new rules, compared to the recommendations of the State Plan and the rules of DEP, are the latest and most evident reminder that the State promises of coordinated rules and policies among the State departments and agencies has been nothing more than talk. COAH should not adopt new rules until it coordinates the rules with the State Planning Commission and the Department of Environmental Protection to assure that the required affordable housing units can be appropriately, practically and reasonably be provided by municipalities without violating other state rules and policies.

RESPONSE: The Council is attempting to work with DEP to coordinate the areas appropriate for development of affordable housing. Further, the Council is amending its regulations in accordance with the Appellate Division's decision, and is including DEP's Water Quality Management rules which will be adopted in May 2008 in an attempt to coordinate State policies. When the State Development and Redevelopment Plan is adopted by OSG, COAH will consider its impact on the rules, and will work with OSG to coordinate implementation of its rules.

COMMENT: The report, Analysis of Vacant Land, is dated December 31, 2007, when COAH approved the regulations for publication on December 17, 2007. As a result, it would appear COAH has never approved or authorized the results of the analysis.

RESPONSE: The Council proposed the rules for publication on December 17, 2007. The Council members were aware when they approved the regulations that the data was being updated based on the NJDEP flood hazard regulations. The projections that were generated two weeks later was accompanying data that did not need to be voted on the Council members, as the data did not change the methodology, growth share ratio or regional need approved for publication by the Council.

COMMENT: The rules do not recognize municipal-level growth characteristics. This is at least partially due to the fact that COAH's demographic and housing analyses are at a regional level.

RESPONSE: The analysis, does in fact, incorporate municipal-level growth characteristics. As indicated in the report, the forecast model allocates county-wide projected growth among all the municipalities in a county. The model projects growth for each municipality based on historic growth rates, including consideration of how close to build-out

the municipality is, subject to the constraint that growth in all the municipalities in a county must sum to the projected county control total. The municipal level projections sum to the county totals because the county totals are the best available long term employment and housing projections available for the whole State. However, these projections are only available at the county level, and not the municipal level. There are instances in which there is insufficient land in the municipality to accommodate all the projected growth. In these instances, the growth beyond what the municipality can accommodate spills over into neighboring municipalities. The projections from the allocation model reflect patterns of municipal growth as observed in the past tempered by the amount of vacant land available for future development.

COMMENT: Where land covered by the Highlands Water Protection and Planning Act rule allows development within an area, the vacant or underdeveloped land is not excluded from the growth projections (vacant land inventory - N.J.A.C. 5:97-5.2(d)4), although development may be severely constrained. COAH consultants assumed that growth would continue to occur at densities similar to or higher than existing development densities. This is another overestimate of growth capacity, since many municipalities have reduced permitted densities since the adoption of the Highlands Act.

RESPONSE: Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, COAH's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The consultants are further updating this data to incorporate the estimated impacts of pending DEP Water Quality Management/Wastewater Management Plan Rules changes, using the same methodology as being employed to revise development capacity estimates across the rest of the State. These lower development capacity estimates will be used by COAH's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole.

COMMENT: NCNBR found that approximately 14 percent of the developed land within the State was identified as being used for military uses, athletic fields, transportation/utility right-of-ways, transitional and other uses. In estimating the maximum build-out potential of all available lands, NCNBR utilized an assumption that 10 percent will be used for the non-residential and non-commercial purposes identified above. This assumption is problematic, as military uses comprise much more than 10 percent of the land area in some municipalities, such as Oceanport where Fort Monmouth comprises approximately 20.5 percent (419 acres) of the land area of the Borough (2,040 acres).

RESPONSE: COAH's consultants assumed that 10 percent of future land use would be comprised of military uses, athletic fields and other similar uses. It did not change the composition of already developed military and other uses.

COMMENT: Vacant land capacity estimates used by COAH assume that growth will occur at equal or greater densities than seen in historic development patterns, despite the lowered densities that have resulted from widespread zoning changes around the State during the past several decades, partly as a result of conformance to the State Development and Redevelopment Plan. Trying to prove a lack of vacant land in order to reduce the COAH housing allocation may inappropriately require municipalities to rezone, as COAH would be able to seek out additional available sites and require the municipality to rezone for an overstated amount of growth.

RESPONSE: COAH with its consultants decided that continuing a municipality's land use distribution, as indicated in the Department of Environmental Protection's most recent land use/land cover spatial database, was a reasonable estimation of how land would continue to develop in the future. History has repeatedly shown that zoning does not always translate into actual development. Similarly, COAH and its consultants believe that current residential densities of lands located within sewer service areas, and comparisons with similar type communities within the same State Planning Area, are reasonable estimates of how similar lands within the municipality could develop in the future.

COMMENT: Assumed densities in the vacant land analysis ignore adopted local land use policies, resulting in overestimated growth potential in Planning Areas 3, 4 and 5.

RESPONSE: COAH's consultants used residential development densities within sewer service areas that were

either the community's average existing density or the median of similar communities in its geographic area. Densities outside of sewer service areas were based on the DEP's septic density standards. Non-residential densities were similar to residential. The consultants are updating their vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rule changes.

COMMENT: The proposed rule requires municipalities to develop a plan to address the growth share obligation based on the Council's established projections. These growth share projections were partially based on historic growth trends occurring during the 1993 to 2002 period. This was a period of significant residential development in many municipalities that were addressing their Second Round affordable housing obligations with the construction units linked to Mount Laurel housing.

RESPONSE: Inclusionary developments used to address a prior round obligation will be subtracted from the growth share projection. As a result, municipalities will not incur a growth share obligation from units and development meeting prior round obligations.

COMMENT: Several municipalities state that the numbers of new housing units and employment projected by COAH for the years 2004 to 2018 are overestimated and do not reflect local planning or master plan processes or the amount of available vacant land in the municipality . Some commenters state that the projections do not reflect the recent economic downturn. Others state that the projections inappropriately use historic growth rates from the 1990s and that rates of growth for many of these municipalities have slowed down in recent years due to a lack of available vacant land, buildout constraints, open space purchases or local zoning changes. One commenter stated that they have insufficient non-residentially zoned land to accommodate the non-residential projections and another stated that they would have to undertake unwanted redevelopment to accommodate the projections. Several commenters state that COAH uses a straight-line model to project historic growth rates forward without taking into consideration any of these constraints on development capacity.

RESPONSE: As indicated in the report, the forecast model allocates countywide projected growth among all the municipalities in a county. The model projects growth for each municipality based on historic growth rates, including consideration of how close to build-out the municipality is, subject to the constraint that growth in all the municipalities in a county must sum to the projected county control total. The municipal level projections sum to the county totals because the county totals are the best available long term employment and housing projections available for the whole State. However, these projections are only available at the county level, and not the municipal level. There are instances in which there is insufficient land in the municipality to accommodate all the projected growth. In these instances, the growth beyond what the municipality can accommodate spills over into neighboring municipalities. The projections from the allocation model reflect patterns of municipal growth as observed in the past tempered by the amount of vacant land available for future development. The growth projections will be updated in the near future based on municipal level housing and employment growth observed over the period from 1993 through 2006. The municipal-level housing data will be updated through 2006 using certificate of occupancy information and information on demolitions, and employment data will be updated using 2006 data from the New Jersey Department of Labor and Workforce Development. The sample period is long enough to capture both periods of strength and weakness in the local economies and the projected growth is consistent with patterns observed in the past. The growth forecast uses "S-curves," which account for the relationship between a municipality's growth rate and how close to build-out the municipality is. Growth rates slow as a municipality approaches its build-out constraint. COAH's revised methodology will calculate S-curves for each COAH region for both housing and employment based on the 1993 through 2006 historic growth, and capacity limits based on revised estimates of vacant, developable land, taking into account the new DEP Water Quality Management Rules. The commenter should note that these growth projections are long-term projections, and they may run counter to short-term growth trends experienced by a municipality. Several municipalities have indicated that they believe they have significantly less development capacity than the amount ascribed to them in the proposed regulations. The amount of development capacity for each municipality was determined using a consistent, Statewide method. This method will be updated in a future rule amendment to specifically include consideration of the Highlands Act and the new DEP Water Quality Management Rules. Growth constraints will also be updated and

incorporated into the latest projections. A municipality that has a lack of vacant land to accommodate the COAH household and employment growth projections may seek a household and employment growth projection adjustment pursuant to N.J.A.C. 5:97-5. In addition, reliance on municipal zoning, land use and historical property ownership patterns, may not be an appropriate set of conditions on which to predicate growth projections that are to be used for the purposes of identifying growth areas in which affordable housing opportunities must be captured.

COMMENT: Detailed, reality-based build-out studies tell a very different story about New Jersey's capacity for growth than the one COAH predicts. When it achieves full buildout, this municipality only has the zoning and land capacity for 825 of the 1,611 dwelling units COAH believes will be built here by 2018.

RESPONSE: Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a statewide basis in several years, and it hopes to use this more preferred and accurate data in the future.

COMMENT: It may be that 1.3 million acres of land in the State remain undeveloped but that doesn't mean that housing should be built on all of them, even if none were environmentally constrained. Open space, environmentally sensitive or not, should not have to be fragmented to provide enough affordable housing. Ecological sustainability is important to all New Jersey residents.

RESPONSE: COAH, its consultants and representatives from the Office of Smart Growth and Department of Environmental Protection met in May 2007 to discuss potential sources of data that were available for the vacant land study and to identify all recently adopted or pending land use and environmental regulations that would be used as constraints on future development. Lands that were considered natural heritage priority sites, habitat for threatened and endangered species, undeveloped and unconstrained privately owned open space and forests, and steep slopes were all considered to be outside of these rules except where specifically made part of the Highlands Act.

COMMENT: Appendix F, Task 1, Allocating Growth to Municipalities indicates that between 2004-2018 Harrison Township will grow by 1,391 dwelling units. This results in an affordable housing obligation of 278 affordable units. COAH, or its consultants, somehow arrived at this number even though the "S" Curve, a standard statistical measurement for population, projects an increase of 277 new dwelling units from 2004 to 2018. It appears from the review of these data for Harrison Township, that COAH took the growth from 2002-2004 of 198 units, and then multiplied it by seven to cover the period 2004 through 2018. This is unacceptable and calls into question the entire basis on which the allocation methodology is developed. The Township supports the use of the "S" Curve as an accurate method to predict future growth in the Township.

RESPONSE: As indicated in the report, the forecast model allocates countywide projected growth among all the municipalities in a county. The model projects growth for each municipality based on historic growth rates, including consideration of how close to build-out the municipality is, subject to the constraint that growth in all the municipalities in a county must sum to the projected county control total. The municipal level projections sum to the county totals because the county totals are the best available long term employment and housing projections available for the whole State. However, these projections are only available at the county level, and not the municipal level. There are instances in which there is insufficient land in the municipality to accommodate all the projected growth. In these instances, the growth beyond what the municipality can accommodate spills over into neighboring municipalities. The S-Curve is, in fact, used as part of the projection method.

COMMENT: Were municipal, State and Federal lands beyond a three percent cap of the township's total land area utilized to growth projections? Was land in the Planning Area Protection Zone used to project growth and if so, at what density/intensity?

RESPONSE: COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP) and the Highlands Council. This included data on farmland preservation and purchases of open space by State, county, municipal and non-profit organizations made available to the Office of Smart Growth through the 2007. None of these lands were treated as vacant and available for development. COAH did not use a three percent cap on State and Federal lands when developing the growth projections. COAH used a zero percent conformance model when projecting capacity in the Highlands Planning Area in consideration of the fact that the draft RMP is not scheduled to be adopted until Summer 2008 and in consideration of the fact that municipal participation in the RMP will be voluntary.

COMMENT: COAH should not adopt the new Third Round rules until fully analyzing the ramifications of the Highlands Protection Zone. A separate set of growth projections should be provided in the new rules that address the growth constraints imposed by the Highlands Protection Zone, in anticipation of the Highlands Council's adoption of Protection Zone regulations.

RESPONSE: Due to the potential impact of the pending Highlands Regional Master Plan to reduce future growth capacity, COAH's consultants are revising their vacant land development capacity estimates for the Highlands Planning Area to consider municipal zoning data recently released by the Highlands Council. The consultants are further updating this data to incorporate the estimated impacts of pending DEP Water Quality Management/Wastewater Management Plan Rule changes, using the same methodology as being employed to revise development capacity estimates across the rest of the State. These lower development capacity estimates will be used by COAH's consultants to revise growth projections to 2018 for individual municipalities and the Highlands Planning Area as a whole. However, the commenter should note that the draft RMP is not scheduled to be adopted until Summer 2008 and municipal participation in the RMP is voluntary.

COMMENT: COAH's housing and employment growth projections are patently unfair, as they hold the Borough responsible for development activity on Fort Monmouth over which the Borough has no control. The data sets for the years 1993, 1997 and 2003, obtained from the NJDLWD website, were used to calculate the change in employment for a period of 10 years. Federal jobs comprised a total approximately 68 percent of the total jobs existing within the Borough in 2003. COAH contends that the local government has to meet the housing obligation incurred due to any increase in Federal employment, while COAH has a totally different rationale for State government employment. Page 23 of Task 1-Allocating Growth to Municipalities states that from a policy perspective the growth of State government employment is usually not the prerogative of the local government. In Oceanport Borough, the same rationale should apply to the portion of the Federally-owned Fort Monmouth site located within the Borough. As the Federal government initiates the planning and development of Federal facilities, the housing obligations resulting from the growth of Federal government employment should be better born by the Federal government. Therefore, any housing obligations resulting from an increase in Federal government employment or housing units should not be born by the Borough.

RESPONSE: The Council thanks the commenter for raising this issue and notes that the rules will be amended in the near future to address regionalization of affordable housing mechanisms through agencies such as the Fort Monmouth Economic Revitalization Planning Agency. The FHA places the affordable housing obligation on municipalities to provide for their fair share of low- and moderate-income housing within municipal boundaries. As to the issue of growth or loss of Federal jobs, municipalities will recalculate their affordable housing obligations at the time of each biennial monitoring report and may amend their Housing Element and Fair Share Plan at that time, pursuant to N.J.A.C. 5:97-2.5(b)2iv. Recognizing the need for affordable housing that results from development that occurs without municipal approval, the Council will amend the rules in the near future to include a provision encouraging municipalities to work with regional planning commissions and authorities to provide for their affordable housing obligation through partnership programs.

COMMENT: The COAH's housing and employment growth projections are patently unfair, as they also hold Oceanport Borough responsible for development activity on the properties under the ownership and control of the New

Jersey Sports and Exposition Authority (NJSEA) over which the Borough has no control. As the NJSEA controlled the planning and development of these lands, the housing obligations resulting from development on these lands should be better born by the NJSEA, as it is an entity controlled by the State government. Therefore, any housing obligations resulting from development should not be born by the Borough.

RESPONSE: The FHA places the affordable housing obligation on municipalities to provide for their fair share of low- and moderate-income housing within municipal boundaries. Recognizing the need for affordable housing that results from development that occurs without municipal approval, the Council will amend the rules in the near future to include a provision encouraging municipalities to work with regional planning commissions and authorities (such as the NJSEA) to provide for their affordable housing obligation through partnership programs.

COMMENT: The data provided by the NJDEP in its GIS model does not take into account landfills, quarries, cemeteries, school campuses, churches, open space purchased by the township or county or NJDOT property held for future roadway development.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture and Department of Environmental Protection (NJDEP). That data does not identify school campuses and churches, but does include all open space quarries and cemeteries, all of which were considered developed lands. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred and accurate data in the future.

COMMENT: The commenter questions on Page 55 of the Econsult Task 1 report, the column headed "Employment Based on Historic Growth." The number in this column for Swedesboro Borough is 31,858, which is not consistent with the numbers in the other columns, and is likely in error.

RESPONSE: The employment projections in the January 2008 report were based on historic data from 1993 through 2003. The rule will be amended in the near future to include an updated report which will be based on data through 2006.

COMMENT: Hampton Township is a rural municipality. There is no public transportation within the county. There is no need for an increase in affordable housing units within Hampton Township. If the units are constructed, low and moderate income persons will be unable to commute to a job. Approximately 70 percent of the residents of Sussex County commute outside the county to work. The low and moderate income persons would be unable to commute to a job either within or out of the county because of the lack of public transportation.

RESPONSE: The commenter is assuming that no low or moderate income households have access to cars or van pools to commute to their places of employment. This may not be the case. However, municipalities have a number of mechanisms available to them to meet their affordable housing obligation that can be ideally located near employment opportunities. Also, the commenter's community can enter into a municipal partnership with an adjacent municipality as set forth at N.J.A.C. 5:97-6.13, which allows two or more municipalities to cooperate to build low and moderate income housing units. This program will be useful to small municipalities with limited infrastructure.

COMMENT: Growth Areas assumed by COAH include not only the sewer service areas (SSAs) in SDRP Planning Areas 1 and 2 and Centers but also the vast (and soon to be removed) SSAs that have been "on the books," but unsewered, for many years. As NJDEP promotes State Plan policies to protect the environs by better managing wastewater treatment for growth areas and Centers, the presumed growth capacity of these disappearing SSAs will

disappear as well, further concentrating too much growth on too little usable land.

RESPONSE: COAH's consultants have been working with NJDEP to incorporate additional information with regard to increasing the size of certain stream buffers and refining where development may be permitted within floodplain areas, both of which are regulated by the recently adopted Flood Hazard Control Act. In addition, they are updating the vacant land and development capacity analysis to incorporate the estimated impacts of the pending Water Quality Management/Wastewater Management Plan Rule changes. DEP is currently reviewing its proposed changes to C-1 stream classifications, and could not make any updated spatial data available with regard to potential impacts.

COMMENT: The commenter questions the job multipliers utilized for Swedesboro Borough in Section 4.1.2; these employment conversion factors should be part of the published report so that they can be reviewed.

RESPONSE: The conversion factor for Swedesboro is 2.57 jobs per 1,000 square feet. While the information is publicly available and distributed when requested, the Council does not believe it is necessary or possible to publish all the underlying data that formed the basis of the report.

COMMENT: Many municipalities have difficulties with the number of new housing units and jobs projected by COAH by the end of 2018. For example, you project that between 2004 and 2018 Bergen County alone will have an increase of 59,800 jobs. But according to statistics from the N.J. Department of Labor and Workforce Development, Statewide 9,500 jobs were lost last month, and throughout all of last year, 4,700 jobs were created.

RESPONSE: The methodology will be updated in a rule amendment in the near future to calculate historic growth rates through 2006. The municipal-level housing data will be updated through 2006 using certificate of occupancy information and information on demolitions, and employment data will be updated using 2006 data from the New Jersey Department of Labor and Workforce Development. The updated methodology will include new growth rates for the 1993 through 2006 period based on the updated data, and recalculated the S-curves for each COAH region for both housing and employment. The commenter should note that these growth projections are long-term projections, and they may run counter to short-term growth trends experienced by a municipality.

COMMENT: Growth projections need to be more accurate. Projections of growth should have been based upon census data from 2000 as the 1999 base, actual certificates of occupancy since that date, and information from the State Planning Commission's cross acceptance process, or other authoritative source, to project to 2018. Instead, the growth projection model extrapolates housing and jobs for 1999, and then estimates 2002 numbers in order to project out to 2018. The 2004 projections are then derived from those straight line or linear projections. The model is designed to predict what has already occurred, when actual certificates of occupancy should have been analyzed to derive real numbers. We know what the 2000 census provided, and we know that DCA tracks certificates of occupancy. Actual growth could have easily been determined from 1999 to 2004. Projected growth to 2018 should have considered State Planning information from the most recent cross acceptance process, or some other economic growth and development projections supplied by the State Planning Commission pursuant to N.J.S.A. 52:27D-307, and as directed by the court. By creating a model, and then not cross checking the results of the model against actual events, or considering State Planning Commission projections in a meaningful way, there are substantial errors in the municipal projections.

RESPONSE: While other projections exist, most notably Metropolitan Planning Organization (MPO) projections, the population and employment projections provided by the NJDLWD were chosen to provide the county control totals for population and employment for several reasons. First, there is a common methodology for forecasting population and employment for all New Jersey Counties. Methodological and data consistency is the primary concern in choosing a set of projection data that applied uniformly across the state. Since the NJDLWD projection models have built-in connection of population and economic changes, the projection method is not only consistent across geography but across sectors. Prepared separately by three different MPOs, the county projections from MPOs do not add up to an agreeable state total. Since the South Jersey Transportation Planning Organization (SJTPO) does not report its projection methodology in its website, the Council's consultants cannot evaluate it in details. The county population

projection models used by Delaware Valley Regional Planning Commission (DVRPC) and the North Jersey Transportation Planning Authority (NJTPA) are similar in terms of using countywide and region-wide cohort survival techniques, but their county employment models differ significantly. DVRPC uses an employment to-population/household method while NJTPA uses the NJDLWD, the New York Metropolitan Transportation Council (NYMTC) and a regional shift-share method to estimate the county employment range. NJDLWD projections, on the other hand do not have such methodological inconsistencies. The NJDLWD approach provides a consistent methodology in its projection of county population and employment by industry (work place based). It is reported in http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi03/method.pdf. NJDLWD developed and compared the merit of four projections models: Economic-Demographic Model; Historical Migration Model; Zero Migration Model; Linear Regression Model. NJDLWD chose the Economic-Demographic Model as the preferred model for the county population and employment projection. In this model, related methods are used. Cohort-survival method is used to project population initially but the projection is adjusted by how future labor demand affects age-specific migration. It should be noted that MPO's make some projections at the municipal level. However, each MPO distributes the county totals to municipalities in different manners. Again, SJTPO does not report its method. The allocation method used by NJTPA is similar to the Econsult method. However, DVRPC focuses on adjusting the difference in the current forecast and the previous one; and relies much on the input of county planning staff to revise the municipal forecasts. Once again, the inconsistency is problematic for developing Statewide rules. While the use of State Planning Commission projections was considered, they have not been finalized or adopted.

Summary of Agency-Initiated Changes

N.J.A.C. 5:94-1.2 has been amended to reflect that the Council is no longer repealing N.J.A.C. 5:94, which chapter was effective December 20, 2004, as three municipalities, Buena Borough in Atlantic County, Washington Township in Morris County, and White Township in Warren County, were previously granted substantive certification by the Council under these rules, and said certifications were upheld by the Appellate Division in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007).

Proposed new N.J.A.C. 5:94 has been recodified as N.J.A.C. 5:97. All cross-references have been corrected to reflect the recodification of N.J.A.C. 5:94 as N.J.A.C. 5:97 and N.J.A.C. 5:95 (the Council's Procedural Rules, adopted concurrently with the Substantive Rules) as N.J.A.C. 5:96.

In N.J.A.C. 5:94-1.4, the definition for "middle income housing" was deleted as it is not used in the rule as adopted and the definition for "individuals with special needs" was clarified.

In N.J.A.C. 5:97-2.2(d), the reference to N.J.A.C. 5:97-2.2 (d) was corrected to be N.J.A.C. 5:97-2.3(d). N.J.A.C. 5:97-2.5(a)1 was clarified to reflect that only market rate units are to be counted, as stated in N.J.A.C. 5:97-2.5(a).

Cross-references in N.J.A.C. 5:97-5.2(k) have been corrected. N.J.A.C. 5:97-5.3(b)3 was clarified to change the word "where" to "when." The cross-reference to N.J.A.C. 5:97-2.4 in N.J.A.C. 5:97-5.6(b) has been corrected to be N.J.A.C. 5:97-2.5.

N.J.A.C. 5:97-6.4(b)2 was clarified to clearly state that at least one, but not all, of the conditions listed must be met. Mathematical errors in the example in N.J.A.C. 5:97-6.4(b)2i were corrected. N.J.A.C. 5:97-6.4(b)7 was clarified to clearly state that at least one, but not all, of the conditions listed must be met. N.J.A.C. 5:97-6.5(a)2ii was clarified to correct the year to be 2018.

N.J.A.C. 5:97-7.8(a) was clarified to reflect the review process of the Council and the county planning board(s). The codification of paragraphs in N.J.A.C. 5:97-7.10(a) was corrected.

N.J.A.C. 5:97-8.3(e)3 was clarified to change "imposition of a municipal development fee ordinance" to "adoption of a municipal development fee ordinance."

All text relating to the effective date of N.J.A.C. 5:97 have been updated with the actual date.

Federal Standards Statement

No Federal standards analysis is required because these rules are not being adopted in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 94
SUBSTANTIVE RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD BEGINNING DECEMBER 20, 2004

5:94-1.2 Short title; purpose; scope

(a) (No change.)

(b) The purpose of this chapter is to establish criteria to be used by *[municipalities]* ***Buena Borough in Atlantic County, Washington Township in Morris County, and White Township in Warren County, for which substantive certification was granted by the Council prior to January 25, 2007 and upheld in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing,* 390 N.J. Super. 1 (App. Div. 2007), *certif. denied,* 192 N.J. 71 (2007),*** in addressing their constitutional obligation to provide a fair share of affordable housing for low- and moderate-income households.

(c) All municipalities *[within the jurisdiction of the Council are subject to evaluation in accordance with the provisions of this chapter]* ***that did not receive third round substantive certification prior to January 25, 2007 shall be governed by the provisions of N.J.A.C. 5:97***.

(d) (No change.)

CHAPTER *[94]* ***97***
SUBSTANTIVE RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD BEGINNING *[(THE EFFECTIVE DATE OF THIS CHAPTER)]* ***JUNE 2, 2008***

SUBCHAPTER 1. GENERAL PROVISIONS

*[5:94]****5:97***-1.1 Introduction

(a) The New Jersey Supreme Court stated in *Southern Burlington County NAACP v. Mt. Laurel*, 92 *N.J.* 158, 238 (1983) (*Mount Laurel II*): "There is nothing in our Constitution that says that we cannot satisfy our constitutional obligation to provide lower income housing and, at the same time, plan the future of the state intelligently." The Council's third round rules in this chapter implement a "growth share" approach to affordable housing by linking the actual production of affordable housing with municipal development and growth. The Council believes that this approach will hew more closely to the doctrinal underpinning of *Southern Burlington County NAACP v. Mt. Laurel*, 67 *N.J.* 151 (1975) (*Mount Laurel*) in that municipalities will provide a realistic opportunity for construction of a fair share

of low- and moderate-income housing based on sound land use and long range planning.

(b) *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95*, 390 *N.J. Super.* 1, 56 (App. Div. 2007), *certif. denied* 192 N.J. 72 (2007), the New Jersey Appellate Division stated that, "If municipalities with substantial amounts of vacant land and access to infrastructure can decide for themselves whether and how much to grow, it is highly likely that housing opportunity will fall far short of identified housing need." Therefore, the revised growth share approach relies in part on independent household and employment growth projections, which each municipality will utilize in its long range planning for affordable housing.

(c) The Council's "growth share" methodology requires that each municipality's provision of affordable housing coincide with its obligation generated by actual residential and non-residential growth. Because each municipality must also develop a plan to address its growth share obligation based on the Council's established projections, the realistic opportunity for affordable housing will address the overall need estimated by the Council, through this combined approach.

(d) There are three components to the third round Methodology: the rehabilitation share, the prior round obligation, and the "growth share." Growth share is generated by Statewide residential and non-residential growth during the period January 1, 2004 to December 31, 2018 based on individuals projected to need affordable housing from 1999 through 2018. As a result, for every five residential units constructed, the municipality shall be obligated to include one unit that is affordable to households of low or moderate income (one affordable unit for every four market rate units). Job creation carries a responsibility to provide housing as well. For every 16 newly created jobs as measured by new or expanded non-residential construction within the municipality in accordance with chapter Appendix D, incorporated herein by reference, the municipality shall be obligated to provide one unit that is affordable to households of low- and moderate-income. This method requires that municipalities meet the actual growth share obligation with not merely a good faith attempt, but with the actual provision of housing for low- and moderate-income households, while continuing to provide a realistic opportunity for affordable housing to address the projected growth share obligation.

*[5:94]***5:97***-1.2 Short title; purpose; scope

(a) The provisions of this chapter shall be known as the "Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning on *[(Effective Date of this Chapter).]* ***June 2, 2008***."

(b) The purpose of this chapter is to establish criteria to be used by municipalities in determining and addressing their 1987 through 2018 constitutional obligation to provide a fair share of affordable housing for low- and moderate-income households.

(c) All municipalities within the jurisdiction of the Council are subject to evaluation in accordance with the provisions of this chapter.

(d) A municipality's Fair Share Plan to address its 1987 through 2018 obligation shall be governed by the provisions of this chapter as follows:

1. A municipality's rehabilitation share shall be subject to the provisions of N.J.A.C. *[5:94]***5:97***-6.2 and 6.3.

2. All built and/or created units shall be subject to the provisions of N.J.A.C. *[5:94]***5:97***-4.

3. All proposed units shall be subject to the provisions of N.J.A.C. *[5:94]***5:97***-6.

*[5:94]***5:97***-1.3 Severability

If any part of this chapter shall be held invalid, the holding shall not affect the validity of remaining parts of this chapter. If a part of this chapter is held invalid in one or more of its applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

*[5:94]***5:97***-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Accessory apartment" means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

"Act" means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.).

"Adjustment" means the application of the Council's rules which, based on other limitations and/or methodological corrections, may reduce or defer a municipality's prior round obligation or reduce a municipality's 2004 through 2018 household and employment projections, pursuant to N.J.A.C. *[5:94]***5:97***-5.

"Affirmative marketing" means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

"Affordability assistance" means the use of funds to render housing units more affordable to low- and moderate-income households, pursuant to N.J.A.C. *[5:94]***5:97***-8.8.

"Affordable" means a sales price or rent within the means of a low**-*** or moderate**-*** income household as defined in N.J.A.C. *[5:94]***5:97***-9.

"Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

"Affordable housing partnership program" means a voluntary agreement by which two or more municipalities cooperate to build low- and moderate-income housing units pursuant to N.J.A.C. *[5:94]***5:97***-6.13.

"Affordable unit" means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. *[5:94]***5:97***-4, and/or funded through an affordable housing trust fund.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

"Age-restricted housing" means a housing unit *[within an affordable development]* that is designed to meet the needs of, and is exclusively for, an age-restricted segment of the population such that:

1. All the residents of the development ***where the unit is situated*** are 62 years or older;

2. At least 80 percent of the units are occupied by one person that is 55 years or older; or

3. The development has been designated by the Secretary of HUD as "housing for older persons" as defined in Section

807(b)(2) of the Fair Housing Act, 42 U.S.C. §§3607.

"Assisted living residence" means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor. Apartment units offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

"Assisted living services" means a coordinated array of supportive personal and health services, available 24 hours per day. Assisted living promotes resident self-direction and participation in decisions that emphasize independence, individuality, privacy and dignity in a homelike surrounding.

"Barrier free escrow" means the holding of funds collected to adapt affordable unit entrances to be accessible in accordance with P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.). Such funds must be held in a municipal affordable housing trust fund pursuant to N.J.A.C. *[5:94]***5:97***-8.

"Calculated need" means the remaining obligation resulting from the subtraction of any adjustments, credits, or bonuses that were included in a municipality's first round certified plan to address the 1987 through 1993 affordable housing obligation, from the prior round obligation.

"Conversion" means the conversion of existing commercial, industrial or residential structures for affordable housing purposes.

"Council" means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in the State.

"Credits" means built units, corresponding bonus credits for built units, units transferred to another municipality within the housing region pursuant to the terms of a regional contribution agreement (RCA), and units that were rehabilitated subsequent to April 1, 2000, pursuant to N.J.A.C. *[5:94]***5:97***-4.

"DCA" means the New Jersey Department of Community Affairs.

"Deficient housing unit" means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

"DEP" means the New Jersey Department of Environmental Protection.

"Designated center" means a center that has been officially recognized as such by the State Planning Commission.

"Developer" means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

"Development fee" means money paid by a developer for the improvement of property as permitted in N.J.A.C.

*[5:94]***5:97***-8.3.

"Durational adjustment" means a deferral of the prior round affordable housing obligation based on lack of infrastructure pursuant to N.J.A.C. *[5:94]***5:97***-5.4.

"Elder cottage housing opportunities (ECHO) units" means modular, self-contained units erected on sites containing an existing dwelling. ECHO units are restricted to individuals aged 55 years or older and/or people with disabilities.

"Endorsed plan" means a municipal, county or regional plan which has been approved by the State Planning Commission for plan endorsement as a result of finding it consistent with the State Development and Redevelopment Plan, pursuant to N.J.A.C. 5:85-7.

"Equalized assessed value (EAV)" means the assessed value of a property divided by the current equalization ratio for the municipality. Estimates at the time of building permit may be obtained by the tax assessor utilizing estimates for construction cost. Final equalized assessed value shall be determined at project completion by the municipal assessor.

"Fair share obligation" means the sum of each municipality's 1999 through 2018 rehabilitation share as assigned in chapter Appendix B, incorporated herein by reference; the 1987 through 1999 prior round obligation as assigned in chapter Appendix C, incorporated herein by reference; and the 1999 through 2018 growth share obligation as determined in accordance with N.J.A.C. *[5:94]***5:97***-2.

"Fair share round" means any one of three periods in time during which the Council has established municipal obligations to provide a fair share of affordable housing. The first fair share round includes the period 1987 through 1993. The second fair share round includes the first fair share round and adds the period 1993 through 1999. The third fair share round includes the first and second fair share rounds and adds the period from 1999 through 2018 for which municipal affordable housing needs are estimated, projected, actualized and/or addressed.

"Fair Share Plan" means the plan that describes the mechanisms and the funding sources, if applicable, by which a municipality proposes to address its affordable housing obligation as established in the Housing Element, includes the draft ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. *[5:94]***5:97***-3.

"Family unit" means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is available to the general public and not restricted to any specific segment of the population.

"Farm labor housing" means housing constructed on a commercial farm as defined by the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., for any person (and the family of such person) who receives a substantial portion of his or her income from primary production of agricultural or aquacultural commodities or the handling of such commodities in the unprocessed stage.

"Final approval" means the official action of the planning board taken on a preliminary approved major subdivision or site plan after all conditions, engineering plans and other requirements have been completed or fulfilled and the required improvements have been installed or guarantees properly posted for their completion, or approval conditioned upon the posting of such guarantees.

"Growth share" means the affordable housing obligation generated in each municipality by both residential and non-residential development from 2004 through 2018 and represented by a ratio of one affordable housing unit among five housing units constructed plus one affordable housing unit for every 16 newly created jobs as measured by new or expanded non-residential construction within the municipality in accordance with chapter Appendix D pursuant to the methodology detailed in N.J.A.C. *[5:94]***5:97***-2.

"Gut rehabilitation" means the same as "reconstruction."

"High poverty census tract" means a census tract with a census determined average household poverty rate equal or greater than 25 percent, as determined by the United States Census Bureau.

"Household" means the person or persons occupying a housing unit.

"Household and employment growth projection" means an estimate of the housing unit and job growth anticipated in each municipality between 2004 and 2018 provided by the Council in chapter Appendix F, incorporated herein by reference.

"Household and employment growth projection adjustment" means an adjustment to the household and employment growth projections due to available land capacity, pursuant to N.J.A.C. *[5:94]***5:97***-5.6.

"Housing Element" means the portion of a municipality's master plan, required by the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-28b(3) and the Act, that includes all information required by N.J.A.C. *[5:94]***5:97***-2 and establishes the municipality's fair share obligation.

"Housing region" means a geographic area, determined by the Council, of no less than two and no more than four contiguous, whole counties, which exhibits significant social, economic and income similarities and which constitutes, to the greatest extent practicable, a Primary Metropolitan Statistical Area (PMSA) as last defined by the United States Census Bureau.

"Inclusionary development" means a development containing both affordable units and market-rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

"Individuals with special needs" means individuals with mental illness, individuals with physical or developmental disabilities and individuals in other emerging special needs groups identified by State agencies, that are at least 18 years of age if not part of a household. Special needs populations also include victims of domestic violence; ex-offenders; youth aging out of foster care; individuals and *[families]* ***households*** who are homeless; and individuals with AIDS/HIV.

"Judgment of compliance" means a determination issued by the Superior Court approving a municipality's plan to satisfy its fair share obligation.

"Low income" means 50 percent or less of the median gross household income for households of the same size within the housing region in which the household is located, based upon the U.S. Department of Housing and Urban Development's (HUD) Section 8 Income Limits (uncapped) averaged across counties for the housing region.

"Low income housing" means housing affordable according to Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

"Major system" means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include, but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

"Market-rate units" means housing not restricted to low- and moderate-income households that may sell or rent at any price.

"Market to affordable program" means a program to pay down the cost of market-rate units and offer them in sound condition, for sale or rent, at affordable prices to low- and moderate-income households to address all or a portion of the fair share obligation.

"Medicaid waiver" means a term used to designate a form of insurance payment for certain assisted living care, health and medical services paid through the Enhanced Community Options (ECO) waiver program implemented in response to the Omnibus Budget Reconciliation Act (OBRA) of 1981, Section 2176, Public Law 97-35. The New Jersey Department of Health and Senior Services licenses Medicaid providers of assisted living services and allocates Medicaid waivers to specific licensed assisted living residences.

["Middle income housing" means housing affordable to households with a gross household income equal to more than 80 percent but not more than 120 percent of the median gross household income for households of the same size within the housing region in which the housing is located. For the purposes of calculating development fees pursuant to N.J.A.C. 5:94-8.3(c)2, the upper limits of middle income housing values shall be based on 150 percent of the regional asset limit published annually by the Council.]

"Mixed use zone" means a zone that permits a combination of uses within a single development.

"Moderate income" means more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the household is located, based upon the U.S. Department of Housing and Urban Development's (HUD's) Section 8 Income Limits (uncapped) averaged across counties for the housing region.

"Moderate income housing" means housing affordable according to Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

"Office of Smart Growth (OSG)" means the Office in the Department of Community Affairs that staffs the State Planning Commission and provides planning and technical assistance as requested.

"1,000-unit limitation" means a cap of the prior round affordable housing obligation, pursuant to the Act, where no municipality shall be required to address its fair share beyond 1,000 units within 10 years from the grant of substantive certification.

"Order for repose" means the protection a municipality has from builder's remedy lawsuits for a period of time from the entry of a judgment of compliance from the Superior Court. A judgment of compliance often results in an order for repose.

"Payment in lieu of constructing affordable units" means the payment of funds to the municipality by a developer when affordable units are not produced on a site zoned for inclusionary development.

"Permanent supportive housing" means permanent housing that provide access to supportive services for individuals and households with special needs who can benefit from housing with services.

"Petition for substantive certification" means a request made by municipal resolution which a municipality files, or is

deemed to have filed in accordance with N.J.A.C. *[5:95]* ***5:96***, which engages the Council's review process seeking a determination as to whether the Housing Element and Fair Share Plan of the municipality are consistent with the Act and compliant with rules promulgated by the Council.

"Plan endorsement," "plan endorsement process" or "endorsement" means the process undertaken by a municipality, county or regional agency, counties and municipalities or any grouping thereof, to petition the State Planning Commission for a determination of consistency of the submitted planning documents with the State Development and Redevelopment Plan.

"Planning area" means an area defined by a set of common criteria that focus on the degree and type of development or natural resources. Planning areas serve as organizing mechanisms for growth and development planning throughout the State. This definition is in accord with and derived from the State Development and Redevelopment Plan.

"Post-1986 Credit" means a credit granted by the Council for eligible low and moderate income units, except for rehabilitated units, constructed on or after December 15, 1986.

"Preliminary approval" means the conferral of certain rights pursuant to N.J.S.A. 40:55D-46, 40:55D-48 and 40:55D-49 prior to final approval after specific elements of a development have been agreed upon by the planning board and the applicant.

"Prior-cycle credit" means a credit granted by the Council for eligible low and moderate income units, except for rehabilitated units, constructed on or after April 1, 1980 and before December 15, 1986.

"Prior round obligation" means the cumulative 1987-1999 fair share obligation, which is displayed for each municipality in chapter Appendix C.

"Qualified non-profit" means an organization granted non-profit status in accordance with Section 501(c)(3) of the Internal Revenue Service code.

"RCA Project Plan" means a completed application, submitted by the receiving municipality in an RCA, delineating the manner in which the receiving municipality shall create or rehabilitate low- and moderate-income housing.

"Realistic opportunity" means a reasonable likelihood that the affordable housing in a municipality's Housing Element and Fair Share Plan will actually be constructed or provided during the 10-year period of certification based upon a careful analysis of the elements in the municipality's plan, including the financial feasibility of each proposed mechanism and the suitability of specific sites as set forth in N.J.A.C. *[5:94]***5:97***-3.13.

"Realistic development potential (RDP)" means the portion of the prior round affordable housing obligation that can realistically be addressed with inclusionary development, as determined by the Council through a vacant land adjustment pursuant to N.J.A.C. *[5:94]***5:97***-5.2.

"Recapture funds" means funds collected by the municipality upon the first non-exempt sale of an affordable unit after the expiration of the control period pursuant to the terms of a lien or mortgage note.

"Receiving municipality" means, for the purposes of an RCA, a municipality that contractually agrees to assume a portion of another municipality's fair share obligation.

"Reconstruction" means any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6. Reconstruction shall not include projects

comprised only of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings. Asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted.

"Redevelopment" means planning and construction activities designed to build, conserve or rehabilitate structures, sites and improvements in accordance with a redevelopment plan pursuant to N.J.S.A. 40A:12A-3 of the Local Redevelopment and Housing Law.

"Redevelopment agency" means a municipal redevelopment agency created pursuant to N.J.S.A. 40A:12A-11 of the Local Redevelopment and Housing Law or pursuant to N.J.S.A. 40:55c-1 et seq. (repealed).

"Redevelopment area" or "area in need of redevelopment" means an area determined to be an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-5 and 6 of the Local Redevelopment and Housing Law.

"Redevelopment plan" means a plan adopted by the governing body of a municipality for the redevelopment or rehabilitation of all or any part of a redevelopment area or rehabilitation area pursuant to N.J.S.A. 40A:12A-7 of the Local Redevelopment and Housing Law.

"Regional asset limit" means the maximum housing value, in each housing region, affordable to a four-person household with an income at 80 percent of the regional median as defined by the Council's adopted Regional Income Limits as published annually by the Council.

"Regional Contribution Agreement (RCA)" means a contractual agreement, pursuant to the Act, into which two municipalities voluntarily enter to transfer a portion of a municipality's fair share obligation to another municipality within its housing region.

"Rehabilitation" means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

"Rehabilitation area" or "area in need of rehabilitation" means an area determined to be in need of rehabilitation pursuant to N.J.S.A. 40A:12A-14 of the Local Redevelopment and Housing Law.

"Rehabilitation share" means the number of deficient housing units occupied by low- and moderate-income households within a municipality, established in chapter Appendix B that must be addressed in a Fair Share Plan.

"Residential health care facility" means a facility, attached to another long term care facility licensed by the New Jersey Department of Health and Senior Services, that provides food, shelter, supervised health care and related services, in a homelike setting, to four or more persons 18 years of age or older who are unrelated to the owner or administrator.

"Section 8 income limits" means a schedule of income limits according to Federal Department of Housing and Urban Development standards that define 50 percent and 80 percent of median income by household size. When used in this chapter, Section 8 income limits shall refer to the "uncapped" schedule as published by the Council, in accordance with its rules.

"Sending municipality" means, for purposes of an RCA, a municipality that contractually agrees to transfer a portion of its fair share obligation to another willing municipality.

"Set-aside" means the percentage of housing units devoted to low- and moderate-income households within an inclusionary development.

"State Development and Redevelopment Plan" means the plan prepared and adopted by the State Planning Commission pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.).

"Substantive certification" means a determination by the Council approving a municipality's Housing Element and Fair Share Plan in accordance with the provisions of the Act, this chapter and N.J.A.C. *[5:95]* ***5:96***. A grant of substantive certification may run for a period of 10 years beginning on the date that a municipality files its Housing Element and Fair Share Plan with the Council in accordance with N.J.S.A. 52:27D-313, but shall not extend beyond December 31, 2019.

"Suitable site" means a site that has clear title and is free of encumbrances which preclude development of affordable housing; is adjacent to compatible land uses; has access to appropriate streets, water and sewer infrastructure; can be developed consistent with the Residential Site Improvement Standards and the rules or regulations of all agencies with jurisdiction over the site; and is consistent with the site suitability criteria delineated in N.J.A.C. *[5:94]***5:97***-3.13. A site may be deemed suitable although not currently zoned for affordable housing.

"Supportive and special needs housing" means a structure or structures in which individuals and households reside, as delineated in N.J.A.C. *[5:94]***5:97***-6.10, previously referred to as alternative living arrangements.

"Supportive shared living housing" means a type of permanent supportive housing in which individuals or households maintain separate leases for bedrooms and share common living space.

"Transitional housing" means housing with on-site or off-site supportive services that facilitate the movement of individuals and families, who are homeless or lack stable housing to permanent housing, within a reasonable amount of time, generally up to 24 months.

"20 percent cap" means a cap of the prior round affordable housing obligation, due to limited housing stock, pursuant to N.J.A.C. *[5:94]***5:97***-5.5.

"UHAC" means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.

"Unmet need" means the difference between the prior round affordable housing obligation and the realistic development potential (RDP) as determined pursuant to N.J.A.C. *[5:94]***5:97***-5.2.

"Vacant land adjustment" means an adjustment to the prior round affordable housing obligation due to available land capacity, pursuant to N.J.A.C. *[5:94]***5:97***-5.1 and 5.2.

"Very low income" means 30 percent or less of the median gross household income for households of the same size within the housing region in which the household is located, based upon the U.S. Department of Housing and Urban Development's (HUD) Section 8 Income Limits (uncapped) averaged across counties for the housing region.

"Very low income housing" means housing affordable according to Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 30 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

"Weatherization" means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

SUBCHAPTER 2. PREPARING A HOUSING ELEMENT AND DETERMINING MUNICIPAL FAIR SHARE

OBLIGATION

*[5:94]***5:97***-2.1 General

(a) The Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., requires a municipal master plan to include a Housing Element. A municipality's Housing Element shall be designed to achieve the goal of providing affordable housing to meet the fair share obligation, by demonstrating that existing zoning or planned changes in zoning provide adequate capacity to accommodate household and employment growth projections. The Housing Element shall be adopted by the planning board and endorsed by the governing body prior to the municipal filing pursuant to N.J.A.C. *[5:95]***5:96***-2 or the municipal petition for substantive certification pursuant to N.J.A.C. *[5:95]***5:96***-3.

(b) The Housing Element sets forth the municipal fair share obligation. All components of a Housing Element shall be in accordance with the standards established by this subchapter and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. The contents of a Fair Share Plan describing how the municipality intends to address the obligation determined in its Housing Element are described in N.J.A.C. *[5:94]***5:97***-3.

*[5:94]***5:97***-2.2 Determining the fair share obligation

(a) The need for affordable housing in the State, and in each of the State's six housing regions, is determined on a municipal basis as explained in chapter Appendix A, incorporated herein by reference, and is the sum of:

1. The rehabilitation share;

2. The prior round obligation; and

3. The growth share.

(b) The rehabilitation share for affordable housing is the number of existing housing units as of April 1, 2000 that are both deficient and occupied by households of low or moderate income as determined through the methodology provided in chapter Appendix B. Each municipality's rehabilitation share is displayed in Appendix B.

(c) The prior round obligation is the cumulative 1987 through 1999 fair share obligation, which is displayed for each municipality in chapter Appendix C.

(d) The growth share for the period January 1, 2004 through December 31, 2018 shall initially be calculated based on projections. Projections of household and employment growth shall be converted into projected growth share affordable housing obligations by applying a ratio of one affordable unit among five residential units projected, plus one affordable unit for every 16 newly created jobs projected. The household and employment projections provided for each municipality in chapter Appendix F are based on New Jersey Department of Labor and Workforce Development county projections, which are allocated to the municipal level based on historical trends for each municipality and the extent to which each municipality approaches its physical growth capacity. Alternatively, a municipality may utilize its own growth projections to calculate the growth share pursuant to N.J.A.C. *[5:94]***5:97***-2.2(d), provided the municipal projections exceed the projections in Appendix F. A municipality with insufficient vacant land may request an adjustment to the projections in Appendix F, pursuant to N.J.A.C. *[5:94]***5:97***-5.6.

(e) The actual growth share obligation shall be based on permanent certificates of occupancy issued within the municipality for market-rate residential units and newly constructed, re-occupied and expanded non-residential developments in accordance with chapter Appendix D. Affordable housing shall be provided in direct proportion to the growth share obligation generated by the actual growth. However, if the actual growth share obligation is less than the projected growth share obligation, the municipality shall continue to provide a realistic opportunity for affordable

housing to address the projected growth share through inclusionary zoning or any of the mechanisms permitted by N.J.A.C. *[5:94]***5:97***-6. Although the overall Statewide and regional need calculations are figured from the last year of the prior round (1999) to the last year of the new round (2018), the municipality's portion of the statewide need is compressed into a delivery period that runs from January 1, 2004 to December 31, 2018.

*[5:94]***5:97***-2.3 Content of a Housing Element

(a) The Housing Element submitted to the Council shall include:

1. The minimum requirements prescribed by N.J.S.A. 52:27D-310;

2. The household projection for the municipality as provided in chapter Appendix F;

3. The employment projection for the municipality as provided in Appendix F;

4. The municipality's prior round obligation (from chapter Appendix C);

5. The municipality's rehabilitation share (from chapter Appendix B);

6. The projected growth share in accordance with the procedures in N.J.A.C. *[5:94]***5:97***-2.4; and

7. An inventory of all non-residential space by use group that was fully vacant as of the date of petition, to the extent feasible.

(b) Supporting information to be submitted with the Housing Element shall include:

1. A copy of the most recently adopted municipal zoning ordinance; and

2. A copy of the most up-to date tax maps of the municipality, electronic if available, with legible dimensions.

(c) The municipality shall submit any other documentation necessary to facilitate the review of the municipal Housing Element as requested by the Council.

(d) As an alternate to the household and employment projections required by (a)2 and 3 above, a municipality may rely upon its own household and employment growth projections, provided the total growth share resulting from the municipal household and employment growth projections exceeds the total growth share resulting from the household and employment growth projections provided in Appendix F.

1. The alternate projection of the municipality's probable future construction of housing for 15 years covering the period January 1, 2004 through December 31, 2018 shall consider the following minimum information for residential development:

i. Certificates of occupancy issued since January 1, 2004;

ii. Pending, approved and anticipated applications for development; and

iii. Historic trends of at least the past 10 years, which includes certificates of occupancy issued.

2. The alternate projection of the probable future jobs based on the use groups outlined in chapter Appendix D for 15 years covering the period January 1, 2004 through December 31, 2018 for the municipality shall consider the following

minimum information for non-residential development:

i. Square footage of new or expanded non-residential development authorized by certificates of occupancy issued since January 1, 2004;

ii. Square footage of pending, approved and anticipated applications for development; and

iii. Historic trends, of, at least, the past 10 years, which shall include the square footage authorized by certificates of occupancy issued.

*[5:94]***5:97***-2.4 Projecting the growth share obligation

(a) A municipality shall determine the residential component of its growth share obligation for the period January 1, 2004 to December 31, 2018 based on the household projections provided in chapter Appendix F, unless municipal projections are utilized pursuant to N.J.A.C. *[5:94]***5:97***-2.2(d). If municipal projections are utilized, the growth share obligation shall be determined pursuant to the procedures in N.J.A.C. *[5:94]***5:97***-2.5(a) through (c).

1. In determining its residential growth share obligation, a municipality may subtract the following from its household projection:

i. Affordable housing units that received credit in a first or second round certified plan or a court judgment of compliance which have been or are projected to be constructed after January 1, 2004; ***and***

ii. Market-rate units in an inclusionary or mixed-use development where these affordable housing units received credit in a first or second round certified plan or a court judgment of compliance or are eligible for credit pursuant to N.J.A.C. *[5:94]***5:97***-4 toward a municipality's prior round obligation, which have been or are projected to be constructed after January 1, 2004, provided these sites are zoned to produce affordable housing units. The Council shall assume, for crediting purposes, that market-rate units are constructed at a rate of four times the number of affordable units (this is a 20 percent set-aside) constructed on that particular site, unless the municipality demonstrates to the Council that a lower set-aside percentage was used to produce the affordable units using the gross density and set-aside standards or the set-aside standards for constructing affordable rental units pursuant to N.J.A.C. *[5:94]***5:97***-6.4(b)2iii. A municipality shall not receive an exclusion of market-rate units from residential growth at a rate above 5.67 times the number of affordable units (this is a 15 percent set-aside constructed on that particular site)*[;]***.***

[iii. Affordable housing units that are constructed after January 1, 2004 or have municipal approvals at the time of the municipality's petition and are included in the municipality's third round Fair Share Plan shall be excluded from the household projection for the purposes of projecting the growth share obligation.]

2. After subtracting any exclusions permitted in (a)1 above, the municipality shall have an obligation of one affordable housing unit *[for every four market-rate]* ***among five*** residential units projected to be constructed. For the purpose of calculating the growth share obligation, the municipality shall divide the resulting total units by *[four]* ***five***. The residential growth share obligation shall not go below zero.

(b) A municipality shall determine the non-residential component of its growth share obligation for the period January 1, 2004 to December 31, 2018 based on the employment projections provided in Appendix F, unless municipal projections are utilized pursuant to N.J.A.C. *[5:94]***5:97***-2.2(d). If municipal projections are utilized, the growth share obligation shall be determined pursuant to N.J.A.C. *[5:94]***5:97***-2.5(a) through (c).

1. In determining its non-residential growth share obligation, a municipality may fully or partially subtract from its employment projection, non-residential development that, as a condition of preliminary or final site plan approval

granted prior to January 1, 2004 or as a stipulation included in a developer's agreement executed prior to January 1, 2004, was required to specifically address a portion of a municipality's first or second round obligation or an obligation determined by the court. Such non-residential development may be excluded at a rate of 16 jobs for every one affordable unit addressed within the municipality as measured by new or expanded non-residential construction. Jobs shall be measured by use group pursuant to chapter Appendix D.

2. After subtracting any exclusions permitted in (b)1 above, the municipality shall have an obligation of one affordable housing unit for every 16 jobs projected. For the purpose of calculating the growth share obligation, the municipality shall divide the resulting total jobs by 16. The non-residential growth share obligation shall not go below zero.

(c) The residential growth share obligation calculated pursuant to (a) above shall be added to the non-residential growth share obligation calculated pursuant to (b) above to determine a total projected growth share obligation.

*[5:94]***5:97***-2.5 Measuring the actual growth share obligation

(a) A municipality's actual residential growth share obligation shall be measured based upon permanent market-rate residential certificates of occupancy issued within the municipality between January 1, 2004 and December 31, 2018.

1. In determining the actual residential growth share obligation, the following may be subtracted from the number of ***market rate*** certificates of occupancy issued:

i. Units included in the exclusions permitted by N.J.A.C. *[5:94]***5:97***-2.4(a)1 that have been issued certificates of occupancy;

ii. Additional market-rate units resulting from an increase in density for an inclusionary or mixed-use development pursuant to N.J.A.C. *[5:94]***5:97***-6.4(b)2i that are constructed after January 1, 2004, provided the required affordable units were constructed on-site;

iii. Certificates of occupancy issued for hotels and motels classified as R1 or R2 by the Uniform Construction Code (UCC). These certificates of occupancy shall be included in the non-residential growth share obligation calculated pursuant to (b) below; and

iv. Certificates of occupancy issued for farm labor housing constructed on a commercial farm as defined by the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., and classified as R2, R3, or R5 by the Uniform Construction Code (UCC).

2. After subtracting any exclusions permitted in (a)1 above, the municipality shall have an obligation of one affordable housing unit for every four market-rate residential units constructed. For the purpose of calculating the growth share obligation, the municipality shall divide the resulting total units by four. The residential growth share obligation shall not go below zero.

(b) A municipality's actual non-residential growth share obligation shall be measured based upon the square footage of non-residential development converted to jobs based on the use group ratios provided in chapter Appendix D.

1. In determining the actual non-residential growth share obligation, the municipality shall measure:

i. Jobs gained based on the square footage authorized by permanent certificates of occupancy issued for new or expanded non-residential development for each use group in Appendix D, including hotels and motels classified as R1 or R2 within the municipality between January 1, 2004 and December 31, 2018; and

ii. Jobs gained based on the square footage of non-residential structures that were included on the inventory required by

N.J.A.C. *[5:94]***5:97***-2.3(a)7 and have subsequently been occupied, to the extent feasible.

2. In determining the actual non-residential growth share obligation, the following may be subtracted from the total jobs in (b)1 above:

i. Jobs based on the square footage authorized by certificates of occupancy issued for developments excluded by N.J.A.C. *[5:94]***5:97***-2.4(b)1;

ii. Jobs resulting from an increase in floor area for a mixed-use development pursuant to N.J.A.C. *[5:94]***5:97***-6.4(b)10 that occurs after January 1, 2004, provided the required affordable units were constructed on-site;

iii. Jobs resulting from an increase in floor area for a non-residential development pursuant to N.J.A.C. *[5:94]***5:97***-6.4(b)9 that occurs after January 1, 2004; and

iv. Jobs lost based on the square footage of non-residential structures that were occupied as of the date of petition and have subsequently become vacant, to the extent feasible.

3. The municipality shall have an obligation of one affordable housing unit for every 16 newly created jobs. For the purpose of calculating the growth share obligation, the municipality shall divide the resulting total jobs by 16. The non-residential growth share obligation shall not go below zero.

(c) The residential growth share obligation calculated pursuant to (a) above shall be added to the non-residential growth share obligation calculated pursuant to (b) above to determine a total growth share obligation.

(d) At such time and in such form as the Council requires, the municipality shall provide a comparison of its actual pro-rated growth share obligation and the actual number of affordable units that have been constructed or provided since January 1, 2004. At plan evaluation review pursuant to N.J.A.C. *[5:95]***5:96***-10, the Council shall compare the actual growth share obligation with the actual number of affordable units constructed or provided for the purposes of enforcing remedies described in N.J.A.C. *[5:95]***5:96***-10.4.

(e) If the actual growth share obligation determined in (c) above is less than the growth share obligation projected pursuant to N.J.A.C. *[5:94]***5:97***-2.4, the municipality shall continue to provide a realistic opportunity for affordable housing to address the projected growth share, through inclusionary zoning or any of the mechanisms permitted by N.J.A.C. *[5:94]***5:97***-6.

SUBCHAPTER 3. PREPARING A FAIR SHARE PLAN

*[5:94]***5:97***-3.1 General

(a) A municipality shall develop a Fair Share Plan that meets the requirements of this subchapter to address the municipality's total 1987 through 2018 fair share obligation, including implementing ordinances designed to ensure that the fair share of affordable housing for the 1987 through 2018 period is met.

(b) The Fair Share Plan shall be adopted by the Planning Board and endorsed by the governing body prior to the municipal petition for substantive certification.

*[5:94]***5:97***-3.2 Content of a Fair Share Plan

(a) A Fair Share Plan describes the completed or proposed mechanisms and funding sources, if applicable, that will be

utilized to specifically address a municipality's rehabilitation share, prior round obligation, and growth share obligation. The Fair Share Plan shall be in a form provided by the Council and include at least the following:

1. Descriptions of any credits intended to address any portion of the fair share obligation, which shall include all information and documentation required by N.J.A.C. *[5:94]***5:97***-4 for each type of credit;

2. Descriptions of any adjustments to any portion of the fair share obligation, which shall include all information and documentation required by N.J.A.C. *[5:94]***5:97***-5 for each adjustment sought;

3. Descriptions of any mechanisms intended to address the prior round obligation, the rehabilitation share, and the growth share obligation;

4. An implementation schedule that sets forth a detailed timetable for units to be provided within the period of substantive certification and a timetable for the submittal of all information and documentation required by N.J.A.C. *[5:94]***5:97***-6, based on the following:

i. Documentation for mechanisms to address the prior round obligation, the rehabilitation share, and the growth share obligation up to the first plan review pursuant to N.J.A.C. *[5:95]***5:96***-10 shall be submitted at the time of petition;

ii. Documentation for zoning for inclusionary development, an accessory apartment program, or a market to affordable program shall be submitted at the time of petition and implemented within 45 days of substantive certification; and

iii. Documentation for all mechanisms not included in (a)4i and ii above shall be submitted according to an implementation schedule, but no later than two years prior to scheduled implementation of the mechanism;

5. Notwithstanding (a)4iii above, a municipality with insufficient vacant land that has been granted or is seeking a vacant land adjustment pursuant to N.J.A.C. *[5:94]***5:97***-5.1 or a household and employment growth projection adjustment pursuant to N.J.A.C. *[5:94]***5:97***-5.6 shall submit all information and documentation required by N.J.A.C. *[5:94]***5:97***-6 at the time of petition, unless:

i. The municipality demonstrates that the mechanism(s) does not rely upon the availability of vacant land; or

ii. The municipality takes appropriate measures to reserve scarce resources that may be essential to implement the mechanisms that rely on the availability of vacant land to address the growth share obligation;

6. Draft and/or adopted ordinances necessary for the implementation of the mechanisms designed to satisfy the fair share obligation;

7. A demonstration that existing zoning or planned changes in zoning provide adequate capacity to accommodate any proposed inclusionary developments pursuant to N.J.A.C. *[5:94]***5:97***-6.4;

8. A demonstration of existing or planned water and sewer capacity sufficient to accommodate all proposed mechanisms; and

9. A spending plan pursuant to N.J.A.C. *[5:94]***5:97***-8.10, if the municipality maintains or intends to establish an affordable housing trust fund pursuant to N.J.A.C. *[5:94]***5:97***-8.

(b) The Fair Share Plan shall also include any other documentation pertaining to the review of the municipal Fair Share Plan as required by this chapter and N.J.A.C. *[5:95]* ***5:96*** or requested by the Council.

*[5:94]***5:97***-3.3 Low/moderate income split of the fair share obligation

(a) At least 50 percent of the units addressing a municipality's fair share obligation shall be affordable to low income households.

(b) An odd number shall be split in favor of the low income unit.

*[5:94]***5:97***-3.4 Rental housing requirement

(a) In addressing the fair share obligation, every municipality shall create a realistic opportunity to construct rental units pursuant to the applicable formula set forth in this subchapter.

(b) At least 50 percent of the rental housing obligation addressed within a municipality shall be met with family housing in the Fair Share Plan.

(c) The plan for a rental housing component may include, but not necessarily be limited to, any combination of the following:

1. An affordable rental development;

2. Accessory apartments;

3. Rental units through a market to affordable program;

4. Assisted living residences;

5. Supportive and special needs housing;

6. Agreements with developers to construct and administer affordable rental units as part of an inclusionary development or redevelopment area; and/or

7. The transfer of the rental obligation via an RCA pursuant to N.J.A.C. *[5:94]***5:97***-7, provided the RCA Project Plan provides for the creation or reconstruction of new rental units in the receiving municipality.

(d) The rental obligation for the growth share obligation shall be provided in proportion to the actual growth share obligation measured pursuant to N.J.A.C. *[5:94]***5:97***-2.5 and monitored during plan evaluation review pursuant to N.J.A.C. *[5:95]***5:96***-10.

*[5:94]***5:97***-3.5 Rental bonuses for the prior round obligation

(a) A municipality may receive two units of credit for each rental unit addressing its prior round rental obligation, provided the unit was created in the municipality and occupied on or after December 15, 1986, is not age-restricted and has controls on affordability for at least 30 years. No rental bonuses shall be granted for rental units in excess of the prior round rental obligation.

(b) A municipality may receive 1.33 units of credit for each age-restricted rental unit addressing its prior round rental obligation, provided the unit was created in the municipality and occupied on or after December 15, 1986, and has controls on affordability for at least 30 years. No rental bonuses shall be granted for age-restricted rental units in excess of 50 percent of the prior round rental obligation.

(c) In no event shall a municipality receive more than two units of credit for one unit.

*[5:94]***5:97***-3.6 Rental bonuses for the growth share obligation

(a) A municipality may receive bonuses for rental units in excess of its growth share rental obligation subject to the following:

1. A municipality may receive two units of credit for each rental family or permanent supportive housing unit provided pursuant to N.J.A.C. *[5:94]***5:97***-6.4, 6.5, 6.6, 6.7, 6.9, 6.10, 6.13 or 6.15;

2. A municipality may receive 1.25 units of credit for each bedroom in supportive and special needs housing provided pursuant to N.J.A.C. *[5:94]***5:97***-6.10, where the unit of credit is the bedroom;

3. The unit meets one of the following conditions:

i. The unit was created in the municipality and occupied after June 6, 1999; or

ii. The municipality has provided or received a firm commitment for the construction of the unit. A municipality may lose the rental bonus if the municipality has not constructed the rental unit within the time period established as a condition of substantive certification; has not granted preliminary or final approval for the construction of the rental unit within the time period established as a condition of substantive certification; if the preliminary or final approval is no longer valid; or if the developer has abandoned the development.

4. A minimum of 50 percent of the rental housing requirement has been addressed with family rental units provided pursuant to N.J.A.C. *[5:94]***5:97***-6.4, 6.5, 6.6, 6.7, 6.9, 6.13 or 6.15.

(b) In no event shall a municipality receive more than two units of credit for one unit.

*[5:94]***5:97***-3.7 Very low income bonuses for the growth share obligation

(a) A municipality may receive two units of credit for each affordable unit addressing its growth share obligation that received a Certificate of Occupancy after June 6, 1999 and is deed restricted to be affordable and only available to a very low income household, provided the unit exceeds the number of units required by UHAC.

(b) Very low income bonuses may only be granted for family units provided pursuant to N.J.A.C. *[5:94]***5:97***-6.4, 6.5, 6.6, 6.7, 6.9, 6.13 or 6.15*[;]*****.***

(c) In no event shall a municipality receive more than two units of credit for one unit.

*[5:94]***5:97***-3.8 Age-restricted housing

In addressing the fair share obligation, each municipality may provide age-restricted housing pursuant to the applicable formula set forth in this subchapter.

*[5:94]***5:97***-3.9 Family housing

At least 50 percent of the units within the municipality addressing the growth share obligation shall be family housing units.

*[5:94]***5:97***-3.10 Formulas for municipalities that have not included a vacant land adjustment in any previous or

pending Fair Share Plan

(a) This section sets forth formulas for rental units, age-restricted units, units transferred through RCAs, and age-restricted units transferred through RCAs, for municipalities that have not included a vacant land adjustment in any pervious or pending Fair Share Plan.

(b) Rental units shall be provided as follows:

1. The rental requirement for the prior round obligation shall be based on the following formula:

Rental Requirement = 25 percent (Prior Round Obligation - Prior Cycle Credits - Impact of 20 percent cap - Impact of the 1,000-unit limitation).

2. For municipalities that received first round substantive certification, the rental requirement for the prior round obligation may be based on the following formula:

Rental Requirement = 25 percent (Calculated Need - Impact of the 1,000-unit limitation).

3. The rental requirement for the growth share obligation shall be based on the following formula:

Rental Requirement = 25 percent (Growth Share Obligation).

(c) Age-restricted units may be provided as follows:

1. The age-restricted maximum for the prior round obligation shall be based on the following formula:

Age-Restricted Maximum = 25 percent (Prior Round Obligation + Rehabilitation Share - Prior Cycle Credits - Rehabilitation Credits - Impact of 20 percent cap - Impact of the 1,000-unit limitation - Transferred or Proposed RCA Units Addressing the Prior Round Obligation).

2. The age-restricted maximum for the growth share obligation shall be based on the following formula:

Age-Restricted Maximum = 25 percent (Growth Share Obligation - Transferred or Proposed RCA Units Addressing the Growth Share Obligation).

(d) Units may be transferred through RCAs as follows:

1. The RCA maximum for the prior round obligation shall be based on the following formula:

RCA Maximum = 50 percent (Prior Round Obligation + Rehabilitation Share - Prior Cycle Credits - Rehabilitation Credits - Impact of 20 percent cap - Impact of the 1,000-unit limitation).

2. The RCA maximum for the growth share obligation shall be based on the following formula:

RCA Maximum = 50 percent (Growth Share Obligation).

(e) Age-restricted units may be transferred through RCAs as follows:

1. The number of age-restricted units that may be transferred through one or more RCAs addressing a prior round obligation shall be based on the following formula:

Age-Restricted Maximum = 25 percent (Prior Round Obligation + Rehabilitation Share - Prior Cycle Credits - Rehabilitation Credits - Impact of 20 percent cap - Impact of the 1,000-unit limitation) - (Any Age-restricted Units Addressing the Prior Round Obligation within the Sending Municipality).

2. The number of age-restricted units that may be transferred through one or more RCAs addressing a growth share obligation shall be based on the following formula:

Age-Restricted Maximum = 25 percent (Growth Share Obligation) - (Any Age-restricted Units Addressing the Growth Share Obligation within the Sending Municipality).

*[5:94]***5:97***-3.11 Formulas for municipalities that have been granted a vacant land adjustment as part of a second round substantive certification or judgment of compliance

(a) This section sets forth formulas for rental units, age-restricted units, units transferred through RCAs, and age-restricted units transferred through RCAs, for municipalities that have been granted a vacant land adjustment as part of a second round substantive certification or judgment of compliance.

(b) Rental units shall be provided as follows:

1. The rental requirement for the prior round obligation shall be based on the following formula:

Rental Requirement = 25 percent (RDP).

2. The rental requirement for the growth share obligation shall be based on the following formula:

Rental Requirement = 25 percent (Growth Share Obligation).

(c) Age-restricted units may be provided as follows:

1. For a municipality not transferring units through an RCA, the age-restricted maximum for the prior round obligation shall be based on the following formulas:

i. Age-Restricted Maximum = 25 percent (RDP + Rehabilitation Share - Rehabilitation Credits); and

ii. Age-Restricted Maximum = 25 percent (Unmet Need), unless exempted pursuant to N.J.A.C. *[5:94]***5:97***-5.3(b)6.

2. For a municipality transferring units through an RCA, the age-restricted maximum for the prior round obligation shall be based on the following formulas:

i. Age-Restricted Maximum = 25 percent (RDP - Transferred or Proposed RCA Units Addressing the RDP); and

ii. Age-Restricted Maximum = 25 percent (Unmet Need - Transferred or Proposed RCA Units Addressing Unmet Need), unless exempted pursuant to N.J.A.C. *[5:94]***5:97***-5.3(b)6.

3. The age-restricted maximum for the growth share obligation shall be based on the following formula:

Age-Restricted Maximum = 25 percent (Growth Share Obligation - Transferred or Proposed RCA Units Addressing the Growth Share Obligation).

(d) Units may be transferred through RCAs as follows:

1. The RCA maximum for the prior round obligation shall be based on the following formula:

i. RCA Maximum = 50 percent (RDP + Rehabilitation Share - Rehabilitation Credits); and

ii. RCA Maximum = 50 percent (Unmet Need).

2. The RCA maximum for the growth share obligation shall be based on the following formula:

RCA Maximum = 50 percent (Growth Share Obligation).

(e) Age-restricted units may be transferred through RCAs as follows:

1. The number of age-restricted units that may be transferred through one or more RCAs addressing a prior round obligation shall be based on the following formula:

i. Age-Restricted Maximum = 25 percent (RDP + Rehabilitation Share - Rehabilitation Credits) - (Any Age-restricted Units Addressing the RDP within the Sending Municipality); and

ii. Age-Restricted Maximum = 25 percent (Unmet Need) - (Any Age-restricted Units Addressing the Unmet Need within the Sending Municipality).

2. The number of age-restricted units that may be transferred through one or more RCAs addressing a growth share obligation shall be based on the following formula:

Age-Restricted Maximum = 25 percent (Growth Share Obligation)-(Any Age-restricted Units Addressing the Growth Share Obligation within the Sending Municipality).

*[5:94]***5:97***-3.12 Formulas for municipalities seeking a vacant land adjustment that was not granted as part of a second round substantive certification or judgment of compliance

(a) This section sets forth formulas for rental units, age-restricted units, units transferred through RCAs, and age-restricted units transferred through RCAs, for municipalities seeking a vacant land adjustment that was not granted as part of a second round substantive certification or judgment of compliance.

(b) Rental units shall be provided as follows:

1. The rental requirement for the prior round obligation shall be based on the following formula:

Rental Requirement = 25 percent (RDP) - Rental Credits Applied at the Time of Petition.

2. The rental requirement for the growth share obligation shall be based on the following formula:

Rental Requirement = 25 percent (Growth Share Obligation).

(c) Age-restricted units may be provided as follows:

1. For a municipality not transferring units through an RCA, the age-restricted maximum for the prior round obligation

shall be based on the following formulas:

i. Age-Restricted Maximum = 25 percent (RDP + Rehabilitation Share - Rehabilitation Credits); and

ii. Age-Restricted Maximum = 25 percent (Unmet Need) - Age-restricted credits pursuant to N.J.A.C. *[5:94]***5:97***-5.3(b)6.

2. For a municipality transferring units through an RCA, the age-restricted maximum for the prior round obligation shall be based on the following formulas:

i. Age-Restricted Maximum = 25 percent (RDP - Transferred or Proposed RCA Units Addressing the RDP); and

ii. Age-Restricted Maximum = 25 percent (Unmet Need - Transferred or Proposed RCA Units Addressing Unmet Need) - Age-restricted Credits pursuant to N.J.A.C. *[5:94]***5:97***-5.3(b)6.

3. The age-restricted maximum for the growth share obligation shall be based on the following formula:

Age-Restricted Maximum = 25 percent (Growth Share Obligation - Transferred or Proposed RCA Units Addressing the Growth Share Obligation).

(d) Units may be transferred through RCAs as follows:

1. The RCA maximum for the prior round obligation shall be based on the following formula:

i. RCA Maximum = 50 percent (RDP + Rehabilitation Share - Rehabilitation Credits); and

ii. RCA Maximum = 50 percent (Unmet Need).

2. The RCA maximum for the growth share obligation shall be based on the following formula:

RCA Maximum = 50 percent (Growth Share Obligation).

(e) Age-restricted units may be transferred through RCAs as follows:

1. The number of age-restricted units that may be transferred through one or more RCAs addressing a prior round obligation shall be based on the following formula:

i. Age-Restricted Maximum = 25 percent (RDP + Rehabilitation Share - Rehabilitation Credits) - (Any Age-restricted Units Addressing the RDP within the Sending Municipality); and

ii. Age-Restricted Maximum = 25 percent (Unmet Need) - (Any Age-restricted Units Addressing the Unmet Need within the Sending Municipality).

2. The number of age-restricted units that may be transferred through one or more RCAs addressing a growth share obligation shall be based on the following formula:

Age-Restricted Maximum = 25 percent (Growth Share Obligation)-(Any Age-restricted Units Addressing the Growth Share Obligation within the Sending Municipality).

*[5:94]***5:97***-3.13 Site suitability criteria and conformance with the State Development and Redevelopment Plan

(a) Sites designated to produce affordable housing shall be available, approvable, developable and suitable, *[as evidenced by]* ***according to*** the following criteria:

1. The site has a clear title and is free of encumbrances which preclude development of affordable housing;

2. The site is adjacent to compatible land uses and has access to appropriate streets;

3. The site has access to water and sewer infrastructure with sufficient capacity, and is consistent with the applicable area wide water quality management plan (including the wastewater management plan) or is included in an amendment to the area wide water quality management plan submitted to and under review by DEP; and

4. The site can be developed consistent with the Residential Site Improvement Standards, N.J.A.C. 5:21***, where applicable***.

(b) Sites designated to produce affordable housing shall conform to the State Development and Redevelopment Plan and shall be in compliance with the rules and regulations of all agencies with jurisdiction over the site, including, but not limited to:

1. Sites that are located in Planning Areas 1 or 2 or located within a designated center or located in an existing sewer service area are the preferred location for municipalities to address their fair share obligation.

2. Municipalities or developers proposing sites located in Planning Areas 3, 4, 4B, 5 or 5B that are not within a designated center or an existing sewer service area shall have the burden of demonstrating to the Council that the site is consistent with sound planning principles and the goals, policies and objectives of the State Development and Redevelopment Plan. The Council may seek a recommendation from the Executive Director of the Office of Smart Growth on the consistency of the site with sound planning principles and the goals, policies and objectives of the State Development and Redevelopment Plan.

3. Sites within the areas of the State regulated by the Pinelands Commission, Highlands Water Protection and Planning Council, *[Division of Coastal Resources]* ***Land Use Regulation Division*** of DEP and the New Jersey Meadowlands Commission, shall adhere to the land use policies delineated in The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50; The Highlands Water Protection and Planning Act rules, N.J.A.C. 7:38; the Coastal Permit Program Rules, N.J.A.C. 7:7; the Coastal *[Resource and Development]* ***Zone Management*** Rules, N.J.A.C. 7:7E; and the Zoning Regulations of the New Jersey Meadowlands Commission, N.J.A.C. 19:3, where applicable.

4. The portions of sites designated for construction shall adhere to regulations concerning wetland constraints as delineated on the New Jersey Freshwater Wetlands Maps, or when unavailable, the U.S. Fish and Wildlife Service National Wetlands Inventory; or as delineated on-site by the U.S. Army Corps of Engineers or DEP, whichever agency has jurisdiction; Category One waterway constraints pursuant to N.J.A.C. 7:15; flood hazard constraints as defined in N.J.A.C. 7:13; and steep slope constraints in excess of 15 percent if the municipality has an ordinance in place that uniformly regulates steep slope development throughout the municipality.

5. Historic and architecturally important sites and districts listed on the State or National Register of Historic Places shall be reviewed by the New Jersey State Historic Preservation Office for a recommendation pertaining to the appropriateness and size of buffer areas that will protect the integrity of the site. The review and written recommendation by the New Jersey Historic Preservation Office shall be included in the Housing Element and Fair Share Plan that is the subject of any petition before the Council. Within historic districts, a municipality may regulate low- and moderate-income housing to the same extent it regulates all other development.

(c) The Council may seek a recommendation from the appropriate regulating agency on the suitability of a proposed site. In taking such action, the Council may require the municipality to submit all necessary documentation to the agency so that a review and decision regarding the suitability of any site may be completed.

*[5:94]***5:97***-3.14 Accessible and adaptable affordable units

(a) The first floor of all new townhouse dwelling units and of all other new multistory dwelling units that are attached to at least one other dwelling unit for which an application for a construction permit has not been declared complete by the enforcing agency before October 1, 2006, shall be subject to this section and the technical design standards of the Barrier Free Subcode at N.J.A.C. 5:23-7.

(b) The municipality shall demonstrate the following features regarding townhouses or other multistory dwelling units that are attached to at least one other dwelling unit:

1. An adaptable toilet and bathing facility on the first floor;

2. An adaptable kitchen on the first floor;

3. An accessible route of travel; however, an interior accessible route of travel shall not be required between stories;

4. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and

5. An accessible entranceway or evidence that the municipality has collected funds pursuant to (d) below.

(c) In the case of a unit constructed with an adaptable entrance pursuant to (b)5 above, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.

(d) The builder of the development shall deposit funds, sufficient to adapt 10 percent of the affordable units that have not been constructed with accessible entrances, with the municipality in which the units are located.

1. The developer of the affordable units shall submit the design for conversion of the adaptable entrances with a cost estimate to the local enforcing agency.

2. Once the local enforcing agency has determined that the plans to adapt the entrances meet the requirements of the Uniform Construction Code, N.J.A.C. 5:23, the municipality shall deposit the funds in an affordable housing trust fund pursuant to N.J.A.C. *[5:94]***5:97***-8.5.

3. These funds shall be available for the purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.

(e) Full compliance with this section shall not be required where an entity can demonstrate that it is impracticable for the site to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

*[5:94]***5:97***-3.15 Affordable housing and State-funded smart growth initiatives

Municipalities that have petitioned the Council for substantive certification and are seeking a transit village designation

from the Department of Transportation (DOT) or are participating in other State-funded smart growth initiatives shall ensure, to the extent economically feasible, that the plan for development includes a minimum 20 percent affordable housing set-aside for residential development in addition to complying with criteria that DOT may consider necessary for a transit village, as evidenced by a municipal resolution, developer's agreement(s), or zoning ordinance.

*[5:94]***5:97***-3.16 Coordination with other State agencies

(a) Municipalities that have petitioned the Council for substantive certification are encouraged to seek plan endorsement from the State Planning Commission and shall include a status of the application with their petitions.

(b) To determine whether a municipal Fair Share Plan creates a realistic opportunity for the provision of affordable housing, where applicable, the Council may consult with the State Planning Commission, the New Jersey Meadowlands Commission, the Highlands Water Protection and Planning Council, the Pinelands Commission or other relevant State agencies.

SUBCHAPTER 4. CREDITS

*[5:94]***5:97***-4.1 General

(a) At the time of petition, credits and corresponding bonuses for previous housing activity shall be applied toward the prior round obligation before the credits may be applied toward the growth share obligation, provided such activity complies with the applicable criteria in this subchapter and the applicable formulas set forth in N.J.A.C. *[5:94]***5:97***-3. If the municipality's second round substantive certification included a vacant land adjustment, the credits shall be applied toward the realistic development potential (RDP) before the credits may be applied toward unmet need or the growth share obligation.

(b) A municipality shall document new construction activity with certificates of occupancy, rehabilitation with final inspections, and RCA units with evidence of the required transfer of funds to the receiving municipality, according to the payment schedule in the approved RCA contract. A municipality shall submit information regarding the units on forms provided by the Council.

(c) All credits shall be subject to the applicable formulas set forth in N.J.A.C. *[5:94]***5:97***-3, unless, at the time of third round petition, the municipality effected the construction of all affordable housing or transferred all RCA funds in accordance with its second round substantive certification or judgment of compliance, in which case the Council shall honor the number of age-restricted units, the units addressing the rental requirement and RCAs included in the previously certified plan or judgment of compliance.

(d) All credits shall be subject to verification and validation when a municipality petitions for substantive certification, or during monitoring subsequent to substantive certification pursuant to N.J.A.C. *[5:95]***5:96***-11.

*[5:94]***5:97***-4.2 Prior cycle credits

(a) A housing unit created and occupied between April 1, 1980 and December 15, 1986 is eligible for one credit when it has been developed specifically for households whose income does not exceed 80 percent of median income and the unit was governed by controls on affordability that are not less than 20 years. The units shall be administered and affirmatively marketed in accordance with N.J.A.C. *[5:94]***5:97***-9 and UHAC.

(b) A municipality may receive one credit against its prior round obligation for each unit that does not have the controls on affordability described in (a) above provided the unit satisfies the following criteria:

1. The unit shall have been constructed between April 1, 1980 and December 15, 1986. The municipality shall document the date of construction with a certificate of occupancy date;

2. The unit shall have been certified to be in sound condition as a result of an exterior inspection;

3. The unit is currently occupied by a low- or moderate-income household. The municipality shall document household income eligibility with a certification of household income in a form adopted by the Council. Such certification shall be signed by a head of household. It shall be reviewable only by the Council or its staff and shall not be a public record;

4. If the unit is a for-sale unit, at the time the municipality files its petition for substantive certification, the unit shall have a market value that is affordable to a moderate income household, as follows:

i. The affordable sales price shall be determined pursuant to N.J.A.C. *[5:94]***5:97***-9 and UHAC and shall utilize the homeowner or condominium fees chargeable to the unit on the date of the petition for substantive certification; and

ii. The market value of the unit shall be determined by averaging the reported actual sale prices of three comparable housing units from the municipality that can be documented as being arms length, closed sales transactions and which occurred within one year of the date of filing of the petition. Documentation sources for such sales may include county tax records, TRW REDI Property Data or other such sources, or multi-list records;

5. If the unit is a rental unit, at the time the municipality files its petition for substantive certification, the unit shall have a monthly rent that is affordable to a moderate income household pursuant to the requirements of N.J.A.C. *[5:94]***5:97***-9 and UHAC and the rental must be an arms length transaction; and

6. The application shall be in such a form and contain such information as the Council may require. Such information may include a questionnaire on household composition and unit type, a worksheet to calculate household income, a certification, an exterior survey and a sheet for listing comparables for each eligible unit.

(c) If the credit is to be applied toward the growth share obligation, the controls on affordability shall be in place through December 31, 2018 or, if expiring during the third round period, shall be renewed in conformance with N.J.A.C. *[5:94]***5:97***-9 and UHAC.

*[5:94]***5:97***-4.3 Post-1986 credits

(a) A municipality may receive one credit for each affordable housing unit within an inclusionary development, a municipally sponsored development or a 100 percent affordable development, subject to the applicable provisions of this subsection.

1. Affordable units created and occupied on or after December 15, 1986 and before June 6, 1994 shall meet the following criteria:

i. The units were subject to controls on affordability of not less than 20 years; 10 years for municipalities that received State Aid during that period pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.);

ii. The development demonstrated the appropriate low/moderate income split, bedroom distribution, and sales/rental prices in accordance with chapter Appendix E, incorporated herein by reference; and

iii. The units are administered and affirmatively marketed in accordance with N.J.A.C. *[5:94]***5:97***-9 and UHAC.

2. Affordable units created and occupied on or after June 6, 1994 and before October 1, 2001 shall meet the following

criteria:

i. The units were subject to controls on affordability of not less than 30 years; 10 years for municipalities that received State Aid during that period pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.);

ii. The development demonstrated the appropriate low/moderate income split, bedroom distribution, and sales/rental prices in accordance with Appendix E; and

iii. The units are administered and affirmatively marketed in accordance with N.J.A.C. *[5:94]***5:97***-9 and UHAC.

3. Affordable units created and occupied on or after October 1, 2001 and before December 20, 2004 shall meet the following criteria:

i. The units were subject to controls on affordability of not less than 30 years; 10 years for municipalities that received State Aid during that period pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.);

ii. The development demonstrated the appropriate low/moderate income split, bedroom distribution, and sales/rental prices in accordance with N.J.A.C. *[5:94]***5:97***-9 and UHAC; and

iii. The units are administered and affirmatively marketed in accordance with N.J.A.C. *[5:94]***5:97***-9 and UHAC.

4. Affordable units created and occupied on or after December 20, 2004 shall meet the criteria in N.J.A.C. *[5:94]***5:97***-6.4, 6.5, 6.6 or 6.7, as applicable.

(b) A municipality may receive one credit for each affordable unit created through an accessory apartment program, subject to the applicable provisions of this subsection.

1. An accessory apartment created and occupied on or after June 6, 1994 and before *[(effective date of this chapter)]* ***June 2, 2008*** shall meet the following criteria:

i. The apartment was subject to controls on affordability of not less than 10 years, 30 years if the unit is receiving a bonus credit toward the prior round obligation pursuant to N.J.A.C. *[5:94]***5:97***-3.5;

ii. The program demonstrated the appropriate low/moderate income split in accordance with Appendix E;

iii. The average initial rent of all apartments in the program, including utilities and based on the number of bedrooms, was affordable to a household earning no more than 57.5 percent of median income;

iv. The apartment is administered and affirmatively marketed in accordance with N.J.A.C. *[5:94]***5:97***-9 and UHAC; and

v. At least $ 10,000 was provided to subsidize the creation of the accessory apartment, unless the accessory apartment was created prior to the municipal adoption of an accessory apartment ordinance or was otherwise illegal.

2. Accessory apartments created and occupied on or after *[(effective date of this chapter)]* ***June 2, 2008*** shall meet the criteria in N.J.A.C. *[5:94]***5:97***-6.8.

(c) A municipality may receive one credit for each bedroom in supportive and/or special needs housing (formerly known as alternative living arrangements), subject to the applicable provisions of this subsection.

1. Supportive and special needs housing created and occupied on or after December 15, 1986 and before December 20, 2004 shall meet the following criteria:

i. Supportive and special needs housing may include: transitional housing, Class A, B, C, D, and E boarding homes as licensed and/or regulated by the New Jersey Department of Community Affairs and/or the New Jersey Department of Health and Senior Services; residential health care facilities as licensed and/or regulated by the New Jersey Department of Health and Senior Services; group homes for people with developmental disabilities and/or mental illness as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements; and

ii. The facility was subject to controls on affordability of not less than 10 years, 30 years if the unit is receiving a bonus credit toward the prior round obligation pursuant to N.J.A.C. *[5:94]***5:97***-3.5.

2. Supportive and special needs housing established after December 20, 2004 and before *[(effective date of this chapter)]* ***June 2, 2008*** shall meet the criteria in N.J.A.C. *[5:94]***5:97***-6.10, with the following exception:

i. Units with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, provided said contract is in effect through the period of third round certification, are exempt from the requirement for affordability controls of not less than 30 years.

3. Supportive and special needs housing created and occupied on or after *[(effective date of this chapter)]* ***June 2, 2008*** shall meet the criteria in N.J.A.C. *[5:94]***5:97***-6.10.

(d) A municipality may receive one credit for each apartment in an assisted living residence created and occupied on or after December 15, 1986, subject to the provisions of N.J.A.C. *[5:94]***5:97***-6.11.

(e) A municipality may receive one credit for each affordable unit created through a market to affordable program (formerly known as a write-down/buy-down program), subject to the applicable provisions of this subsection.

1. A unit created and occupied on or after June 6, 1994 and before December 20, 2004 shall meet the following criteria:

i. The unit was subject to controls on affordability of not less than 30 years, 10 years for municipalities that received State Aid during that period pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.);

ii. The program demonstrated the appropriate low/moderate income split in accordance with Appendix E;

iii. The average initial sales price of all units in the program, based on the number of bedrooms, was affordable to a household earning no more than 57.5 percent of median income, unless the range of affordability was accommodated elsewhere in the Fair Share Plan;

iv. The unit is administered and affirmatively marketed in accordance with N.J.A.C. *[5:94]***5:97***-9 and UHAC; and

v. A minimum of $ 20,000 was provided to subsidize the creation of the unit.

2. Market to affordable units created and occupied on or after December 20, 2004 shall meet the criteria in N.J.A.C. *[5:94]***5:97***-9.

(f) A municipality may receive one credit for each affordable unit created and occupied on or after December 20, 2004 through an affordable housing partnership program, subject to the provisions of N.J.A.C. *[5:94]***5:97***-6.13.

(g) If the credit is to be applied toward the growth share obligation, the controls on affordability shall be in place

through December 31, 2018 or, if expiring during the third round period, shall be renewed in conformance with N.J.A.C. *[5:94]***5:97***-9 and UHAC.

*[5:94]***5:97***-4.4 RCA credits

(a) A municipality may receive credit for units transferred through an RCA when the RCA contract has been approved by the Council, subject to the provisions of this section.

(b) RCA credits shall be subject to the applicable formulas set forth in N.J.A.C. *[5:94]***5:97***-3.

(c) The sending municipality shall submit verification that all payments have been transferred to the receiving municipality in accordance with the payment schedule outlined in the RCA contract.

(d) In order to maintain credit for the RCA, any remaining payments shall be made to the receiving municipality in accordance with the payment schedule outlined in the RCA contract.

*[5:94]***5:97***-4.5 Rehabilitation credits

(a) A municipality may receive credit for rehabilitation of deficient housing units occupied by low- and moderate-income households performed subsequent to April 1, 2000, subject to the applicable provisions of this section. In order to receive a rehabilitation credit, the municipality shall submit information regarding the rehabilitated units on forms provided by the Council.

(b) Units rehabilitated or subject to an executed contract for rehabilitation on or after April 1, 2000 and before December 20, 2004 shall meet the following criteria:

1. The unit was rehabilitated up to the applicable code standard and the average capital cost expended on rehabilitating the unit was at least $ 8,000;

2. The unit is currently occupied by the occupants who resided within the unit at the time of rehabilitation or by other eligible low- or moderate-income households;

3. Owner-occupied units were subject to controls on affordability of not less than six years and rental units were subject to controls on affordability of not less than 10 years. The controls on affordability may be in the form of a lien filed with the county;

4. The rehabilitation program is administered by an experienced administrator, pursuant to N.J.A.C. *[5:94]***5:97***-9 and UHAC;

5. Rental units must be included in the rehabilitation program; and

6. The municipality shall submit its adopted rehabilitation manual which includes a description of the program procedures and administration in accordance with this section.

(c) Units rehabilitated or subject to an executed contract for rehabilitation on or after December 20, 2004 shall meet the criteria in N.J.A.C. *[5:94]***5:97***-6.2.

(d) A municipality may receive one credit against its rehabilitation share for each ECHO unit completed subsequent to April 1, 2000, in which a low- or moderate-income occupant is residing, provided the municipality purchased or leased the ECHO unit for a minimum of 10 years.

(e) Credits for rehabilitation shall only be credited against the rehabilitation share.

(f) If a municipality received a rehabilitation credit for the rehabilitation of a unit prior to April 1, 2000, as part of a previous round Fair Share Plan, and the controls on affordability have expired, the municipality may receive a rehabilitation credit if the unit is rehabilitated pursuant to the criteria set forth in this section.

(g) If a municipality received a new construction credit for a deed restricted affordable unit that was built between 1987 and 1993, as part of a first round Fair Share Plan, the municipality may receive a rehabilitation credit if the unit is rehabilitated pursuant to the criteria set forth in this section.

SUBCHAPTER 5. ADJUSTMENTS

*[5:94]***5:97***-5.1 Vacant land adjustment applicability

(a) A municipality may request a vacant land adjustment of its prior round obligation for the first time in accordance with N.J.A.C. *[5:94]***5:97***-5.2.

(b) A municipality that is requesting a vacant land adjustment for the first time or whose vacant land adjustment was not granted as part of a second round substantive certification shall apply its eligible credits pursuant to N.J.A.C. *[5:94]***5:97***-4 toward its unmet need at the time of petition prior to applying credits toward its realistic development potential.

(c) A vacant land adjustment that was granted as part of a second round certification or judgment of compliance shall continue to be valid provided the municipality has implemented all of the terms of the substantive certification or judgment of compliance. If the municipality failed to implement the terms of the substantive certification or judgment of compliance, the Council may reevaluate the vacant land adjustment.

(d) A vacant land adjustment that was granted as part of a first round certification or judgment of compliance shall continue to be valid provided the municipality has implemented all of the terms of the substantive certification or judgment of compliance, and received or petitioned to the Council for second round substantive certification or was under the Court's jurisdiction for second round. If the municipality failed to implement the terms of the substantive certification or judgment of compliance, the Council may reevaluate the vacant land adjustment.

(e) A municipality that was granted or is seeking a vacant land adjustment shall be subject to the applicable formulas set forth in N.J.A.C. *[5:94]***5:97***-3.

*[5:94]***5:97***-5.2 Vacant land adjustment procedures

(a) The standards and procedures in this section shall be used to determine the RDP for a municipality requesting a vacant land adjustment of its prior round obligation.

(b) The municipality shall be responsible for demonstrating that the municipal response to its housing obligation is limited by the lack of land capacity. The municipality shall identify sites that are realistic for inclusionary development in order for the Council to calculate the municipality's RDP. The vacant land adjustment, or unmet need, is the difference between the prior round affordable housing obligation and the RDP. Municipalities shall provide a response to the unmet need in accordance with N.J.A.C. *[5:94]***5:97***-5.3.

(c) The municipality shall submit the following:

1. An existing land use map displaying the land uses of each parcel within the municipality, and a tax map of the entire municipality with legible dimensions at appropriate scales. The land use map shall display the following land uses: single family, two-to-four family, other multi-family, commercial, industrial, agricultural, parkland, other public uses, semipublic uses and vacant land;

2. A copy of the most recently adopted municipal master plan and, when less than three years old, the immediately preceding, adopted master plan;

3. An inventory of all privately and municipally-owned vacant parcels from the tax assessor's office pursuant to (d) below;

4. An inventory of sites that are devoted to a specific use which involves relatively low-density development and could create an opportunity for affordable housing if inclusionary zoning was in place. Such sites include, but are not limited to: a golf course not owned by its members; a farm in Planning Areas 1 or 2; a driving range; nursery; and a nonconforming use;

5. Transparent overlays drawn to the same scale as the existing land use map depicting those sites which the municipality maintains are unsuitable for development pursuant to (d) below; and

6. An inventory of any areas in the municipality that may develop or redevelop. Examples of such areas include, but are not limited to: a private club owned by its members; publicly owned land; downtown mixed use areas; high density residential areas surrounding the downtown; areas with a large aging housing stock appropriate for accessory apartments; properties that may be subdivided and support additional development; and any parcel(s) ripe for redevelopment.

(d) The inventory of vacant parcels shall be listed by lot and block and include the address, acreage, current zoning, and owner of each lot. The municipality shall list contiguous parcels next to each other. The inventory shall also list the amount of acreage that is suitable for development and the amount of acreage that is unsuitable for development and the reasons why the acreage is unsuitable based on the following criteria:

1. The land is owned by a local government entity that adopted a resolution authorizing the execution of an agreement that such land shall be utilized for a public purpose other than housing, prior to January 1, 1997 and the filing of a petition for substantive certification;

2. The individual parcel and/or a combination of contiguous parcels, is of a size which would accommodate less than five dwelling units pursuant to the standard in (h) below.

3. Agricultural lands when the development rights to these lands have been purchased or restricted by covenant;

4. Environmentally sensitive lands as follows:

i. Within the areas of the State regulated by the Pinelands Commission, the Highlands Water Protection and Planning Council, the *[Division of Coastal Resources]* ***Land Use Regulation Division*** of DEP and the New Jersey Meadowlands Commission, municipalities may exclude sites based on: The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50; The Highlands Water Protection and Planning Act rules, N.J.A.C. 7:38; the Coastal Permit Program Rules, N.J.A.C. 7:7; the Coastal *[Resource and Development]* ***Zone Management*** Rules, N.J.A.C. 7:7E; and the Zoning Regulations of the New Jersey Meadowlands Commission, N.J.A.C. 19:3. Where rules of the above agencies permit development within an area, the parcel(s) shall not be excluded from the vacant land inventory.

ii. In areas of the State not regulated by the Pinelands Commission, the Highlands Water Protection and Planning

Council, the *[Division of Coastal Resources]* ***Land Use Regulation Division*** of DEP and the New Jersey Meadowlands Commission, municipalities may exclude sites based on: rules concerning wetland constraints as delineated on the New Jersey Freshwater Wetlands Maps, or when unavailable, the U.S. Fish and Wildlife Service National Wetlands Inventory; or as delineated on-site by the U.S. Army Corps of Engineers or DEP, whichever agency has jurisdiction; Category One waterway constraints pursuant to N.J.A.C. 7:15; flood hazard constraints as defined in N.J.A.C. 7:13; and sites with slopes in excess of 15 percent, as determined from the U.S.G.S. Topographic Quadrangles, which render a site unsuitable for low- and moderate-income housing. In the case of slopes in excess of 15 percent, a municipality may regulate inclusionary development through a steep slope ordinance, provided the ordinance also regulates non-inclusionary developments in a consistent manner.

iii. Where the Legislature adopts legislation that requires the mapping of other natural resources that would restrict development capacity and provides a mechanism for the regulation of such resources, municipalities may exclude sites accordingly;

5. Historic and architecturally important sites as follows:

i. Historic and architecturally important sites listed on the State Register of Historic Places in accordance with N.J.A.C. 7:4 or National Register of Historic Places in accordance with 36 CFR 60 prior to the submission of the petition of substantive certification.

ii. Municipalities may apply to exempt a buffer area to protect sites listed on the State or National Register of Historic Places. The municipality shall include with its petition for substantive certification the review and written recommendation from the New Jersey Historic Preservation Office pertaining to the appropriateness and size of buffer areas that will protect the integrity of the site. Upon review of New Jersey Historic Preservation Office's recommendation, the Council shall determine if any part of a site should be eliminated from the inventory;

6. Active recreational lands as follows:

i. Sites designated for active recreation that are designated for recreational purposes in the municipal master plan. Municipalities shall submit appropriate documentation demonstrating that such active recreational lands are precluded from development.

ii. Additional sites proposed for designation as active municipal recreation, provided that the total active recreational lands do not exceed three percent of the municipality's total developed and developable acreage, calculated pursuant to (d)6iii below. Any sites listed in the municipal master plan as active recreation, including, but not limited to, parking areas and storage areas, shall be included in the three percent calculation.

iii. In determining developable acreage, municipalities shall calculate their total vacant and undeveloped lands and deduct from that total number the lands excluded by the Council's rules regarding historic and architecturally important sites, agricultural lands and environmentally sensitive lands. Municipalities shall also deduct those lands owned by nonprofit organizations, counties and the State or Federal government when such lands are precluded from development at the time of substantive certification; and

7. Conservation, parklands and open space (passive recreation) lands as follows:

i. Land designated by the municipal master plan or dedicated by easement or otherwise for the purposes of conservation, parklands or open space, provided the land is owned, leased, licensed or in any other manner operated by a county, municipality or tax-exempt, nonprofit organization including a local board of education or by more than one municipality, by joint agreement pursuant to P.L. 1964, c. 185 (N.J.S.A. 40:61-35.1 et seq.).

ii. Additional land reserved for conservation, parklands or open space, provided that the total lands designated and/or reserved for conservation, parklands or open space do not exceed three percent of the municipality's total land area.

(e) The Council shall review the existing land use map, tax map, master plan(s) and land inventory to determine consistency with this section and reserves the right to include additional vacant and non vacant sites that were excluded by the municipality. In the case of non vacant sites pursuant to N.J.A.C. *[5:94]***5:97***-5.2(c)4, the Council may request a letter from the owner of the site indicating the site's availability for inclusionary development.

(f) Partial elimination of a site shall not necessarily eliminate an entire site as unsuitable. The Council reserves the right to exclude sites in whole or in part when an environmental constraint(s) threatens the viability of an inclusionary development.

(g) Individual sites that the Council determines are not suitable for low and moderate income housing may also be eliminated from the inventory described in (d) above.

(h) The Council shall consider sites, or parts thereof, not specifically eliminated from the inventory, for inclusionary development. The Council shall consider the character of the area surrounding each site in establishing densities and set-asides for each site, or part thereof, remaining in the inventory. The Council shall also rely on the appropriate regulating agency's regulations regarding development capacity of the site, including the density, when determining RDP. The minimum presumptive density shall be six units per acre and the maximum presumptive set-aside shall be 20 percent. The density and set-aside of each site shall be summed to determine the RDP of each municipality.

Example: Johnsonville Borough has three suitable sites. The sites are 10 acres, five acres and one acre. The larger sites may accommodate eight units/acre. The one acre site may accommodate six units/acre. All sites are assigned a 20 percent set-aside. The RDP equals 25 low and moderate income units.

10 acres	X	8 units/acre	X	.2	=	16
5 acres	X	8 units/acre	X	.2	=	8
1 acre	X	6 units/acre	X	.2	=	1
		RDP			=	25

(i) In the assignment of an RDP, the Council recognizes that some sites are more realistic and/or appropriate than others for the location of inclusionary development. For example, some sites may lack infrastructure or be surrounded by incompatible land uses. However, these sites and others have the potential to develop or redevelop over time and, as such development takes place, the Council has determined that such sites shall contribute toward the housing obligation.

(j) The municipality may address its RDP through any activity approved by the Council, pursuant to N.J.A.C. *[5:94]***5:97***-6. The municipality need not utilize any of the sites used to calculate the RDP if the municipality can devise alternate means of addressing its RDP. The RDP shall not vary with the mechanisms employed by the municipality. In addressing the RDP, a municipality may designate land in (d)2 above for affordable housing infill purposes, but is not required to do so.

(k) The Council may reevaluate a municipality's RDP subsequent to substantive certification if one or more of the following conditions occur:

1. Sites excluded pursuant to *[(d)4]* ***(d)6*** above are not purchased and limited to active recreational purposes within one year of substantive certification;

2. Sites excluded pursuant to *[(d)5]* ***(d)7*** above are not purchased and limited to conservation, parklands or open space within one year of substantive certification; or

3. Sites excluded pursuant to *[(d)5]* ***(d)7*** above no longer serve the purposes of conservation, parklands or open space and subsequently become available for residential or nonresidential development.

*[5:94]****5:97***-5.3 Unmet need

(a) All components designed to address unmet need as part of a municipality's prior round certification or judgment of compliance shall continue in full force (for example, overlay zoning shall be retained). Any affordable housing units created thereunder shall be credited toward unmet need until such time as the municipality has provided for its entire unmet need. During the Council's review of the municipality's petition for substantive certification, the Council shall review the municipality's mechanisms to address unmet need and may require the municipality to amend or add additional mechanisms in accordance with (b) below.

(b) If the municipality has an unmet need, the Council shall review the existing municipal land use map and inventory pursuant to N.J.A.C. *[5:94]****5:97***-5.2(c)6 for areas that may develop or redevelop. After such an analysis, the Council may require one or any combination of the following in an effort to address the unmet need:

1. Zoning amendments that permit apartments or accessory apartments in accordance with N.J.A.C. *[5:94]****5:97***-6.8;

2. A market to affordable program in accordance with N.J.A.C. *[5:94]****5:97***-6.9;

3. Overlay zoning requiring inclusionary development in accordance with N.J.A.C. *[5:94]****5:97***-6.4. In approving an overlay zone, the Council may allow the existing use to continue and expand as a conforming use, but provide that *[where]* ***when*** the prior use on the site is changed, the site shall produce low and moderate income housing;

4. A redevelopment area that includes affordable housing pursuant N.J.A.C. *[5:94]****5:97***-6.6, utilizing the standards in N.J.A.C. *[5:94]****5:97***-6.4(b);

5. The adoption of a development fee ordinance pursuant to N.J.A.C. *[5:94]****5:97***-8.3 and a plan for the use of development fees pursuant to N.J.A.C. *[5:94]****5:97***-8.10; and/or

6. Age-restricted units and RCAs may be applied to unmet need subject to the formulas in N.J.A.C. *[5:94]****5:97***-3, except that age-restricted units to address unmet need that were included in the municipality's prior round certification or judgment and are constructed or have municipal approvals at the time of the municipality's petition are not subject to the formulas in N.J.A.C. *[5:94]****5:97***-3.

(c) No bonuses shall be provided for mechanisms used to address unmet need.

*[5:94]****5:97***-5.4 Durational adjustment

(a) A municipality may request a durational adjustment for a site addressing its prior round obligation for the first time in accordance with (e) through (h) below.

(b) A durational adjustment that was granted as part of second round certification or judgment of compliance for a site that remains un-built shall be reevaluated by the Council at the time the municipality petitions to determine if the site continues to present a realistic opportunity for the construction of affordable housing, which includes an analysis of the availability of infrastructure, pursuant to N.J.A.C. *[5:94]***5:97***-6.5.

(c) If the Council approves the continued imposition of a durational adjustment, the municipality may continue to rely on the site that received the adjustment in addressing its prior round obligation provided it has implemented all the terms of the substantive certification or the judgment of compliance. All components of said certification or judgment that are designed to assure affordable housing development on the site(s) affected by the durational adjustment shall continue in full force and any affordable housing units created hereunder shall be credited toward the municipality's prior round obligation until such time as the municipality has provided for its entire prior round obligation associated with the affected site(s), prior to being used to address the growth share obligation.

(d) If the Council finds that the site no longer presents a realistic opportunity or that the site can realistically accommodate a lower number of units than proposed in the previous Fair Share Plan, the municipality may be required to re-petition in accordance with N.J.A.C. *[5:95]***5:96***-3.4 to replace the site or address the shortfall.

(e) When a municipality has sufficient land, but insufficient water and/or sewer to support inclusionary development, the municipality shall be responsible for demonstrating that the municipal response to its housing obligation is limited by the lack of water and/or sewer capacity.

(f) The Council shall review each site proposed for inclusionary development to determine if it is realistic for the site to receive the required water and/or sewer during the period of substantive certification. The Council shall require sufficient information to determine the site's prospects of receiving infrastructure, and the site's prospects of inclusion in an areawide water quality management plan amendment (including the wastewater management plan, developed in accordance with the rules of the DEP). If the site had been zoned for inclusionary development, the Council shall consider how long the site had been zoned and if the developer had filed a development application.

(g) The Council shall require the site(s) to be zoned for inclusionary development, or, if the site(s) had already been zoned for inclusionary development, the Council shall require the continuation of that zoning.

(h) The lack of adequate capacity, in and of itself, shall constitute a durational adjustment of the prior round obligation. The requirement to address the portion of the prior round obligation with such site(s) shall be deferred until adequate water and/or sewer are made available. In order to provide water and/or sewer on sites the Council determines are realistic for inclusionary development, municipalities shall adhere to the following:

1. Notwithstanding the lack of adequate water and/or sewer at the time a municipality petitions for substantive certification, the municipality shall reserve and set aside new water and/or sewer capacity, when it becomes available, for low- and moderate-income housing, on a priority basis;

2. Municipalities shall endorse all applications to the DEP or its agent to provide water and/or sewer capacity. Such endorsements shall be simultaneously submitted to the Council;

3. Where the DEP or its designated agent approves a proposal to provide infrastructure to a site for the development of low- and moderate-income housing identified in the Fair Share Plan, the municipality shall permit such development; and

4. Where a municipality has designated site(s) for low- and moderate-income housing that lack adequate water and/or sewer and where the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low- and moderate-income housing in the Fair Share Plan, the municipality shall amend its Housing Element and Fair Share Plan and applicable zoning ordinances to permit development of such site for low- and moderate-income housing. The amended Housing Element and Fair Share Plan and zoning ordinances shall be submitted to the Council within 90 days of the site's approval by the DEP or its agent. The Council may waive these requirements when it determines that the municipality has a plan that will provide water and/or sewer to sufficient sites to address the prior round obligation within the substantive certification period.

*[5:94]***5:97***-5.5 20 percent cap

(a) A cap of 20 percent of the occupied housing stock (community capacity at the time the municipality requests the 20 percent cap for the first time) cannot be exceeded by a municipality's prior round affordable housing obligation. This is based on the premise that if the affordable housing was provided as a 20-percent set-aside of inclusionary housing, and if the planned affordable housing was more than 20 percent of units then the new affordable housing and accompanying market units would exceed the number of existing housing units in the community.

(b) An adjustment based on the 20 percent cap which was granted as part of a second round certification or judgment of compliance shall continue to be valid.

(c) Community capacity is determined by multiplying the occupied housing in the municipality at the time the municipality requests the 20 percent cap for the first time by 0.20 and comparing this to the municipal prior round affordable housing obligation.

1. If the community capacity is larger than the municipal prior round affordable housing obligation, the 20 percent cap is zero.

2. If community capacity is smaller than the municipal prior round affordable housing obligation, the difference between community capacity and the municipal prior round affordable housing obligation is the adjustment based on the 20 percent cap.

Johnsonville's Occupied Housing Units	X	20 Percent	=	Community Capacity
80	X	0.20	=	16
Municipal Prior Round Affordable Housing Obligation	-	Community Capacity	=	Adjustment based on 20 Percent Cap

30 - 16 = 14

*[5:94]***5:97***-5.6 Adjustment of household and employment growth projections

(a) A municipality may request an adjustment to its household and employment projections provided in chapter Appendix F utilized to project the municipal growth share obligation, based on an analysis of existing land capacity. In reviewing the request, the Council shall consider both residential and non-residential land capacity regardless of the adjustment sought. The municipality may request the Council's review of its adjustment prior to submitting its petition for substantive certification.

(b) The municipality shall first measure its actual residential and non-residential growth from January 1, 2004 to the date of petition using the procedures in N.J.A.C. *[5:94]***5:97***-2.5 and then subtract housing units created by actual residential growth from the household projection and jobs generated from actual non-residential growth (based on an application of the conversion factors in chapter Appendix D to certificates of occupancy issued) from the employment projection in Appendix F. An adjustment may only be sought against the remaining portion of the projections.

(c) The municipality shall submit the information required by N.J.A.C. *[5:94]***5:97***-5.2(c) and (d), but may not exclude sites pursuant to N.J.A.C. *[5:94]***5:97***-5.2(d)2. If the municipality was previously granted or is requesting a vacant land adjustment pursuant to N.J.A.C. *[5:94]***5:97***-5.1, sites utilized to determine the RDP shall be excluded from the inventory.

(d) The Council shall review the adjustment request pursuant to the procedures in N.J.A.C. *[5:94]***5:97***-5.2(e) through (g). The Council shall consider sites, or parts thereof, not specifically eliminated from the inventory, for development.

(e) Excluding sites pursuant to (c) above, all sites not considered suitable for residential development shall be considered suitable for non-residential development. The Council shall consider the character of the area surrounding each site in establishing densities for each site, or part thereof, remaining in the inventory. The Council shall also rely on the appropriate regulating agency's regulations regarding development capacity of the site, including the density. The minimum presumptive density shall be six units per acre for residential sites and 45 jobs per acre for non-residential sites.

(f) These adjusted housing and employment growth projections shall be added back to the actual growth for the period January 1, 2004 to the date of petition. If the result exceeds the growth projections shown in Appendix F, no change will be made to the projections utilized for the purpose of projecting the growth share obligation pursuant to N.J.A.C. *[5:94]***5:97***-2.4. If the result is less than the growth projections shown in Appendix F by greater than 10 percent, the projections utilized for the purpose of projecting the growth share obligation pursuant to N.J.A.C. *[5:94]***5:97***-2.4 may be adjusted downward. However, the municipality shall not apply the adjustment to its actual growth share obligation measured pursuant to N.J.A.C. *[5:94]***5:97***-2.5. If the actual growth share obligation is less than the adjusted projected growth share obligation, the municipality shall continue to provide a realistic opportunity for affordable housing to address the adjusted projected growth share.

Example: Johnsonville Borough has five sites that are suitable for development, totaling 20 acres. Two of the sites are not suitable for residential development. Two of the residential sites may accommodate eight units per acre and one may accommodate six units per acre. Both non-residential sites may accommodate 45 jobs per acre. The resulting household projection is 103 units and the employment projection is 315 jobs.

Household Adjustment

8 acres	X	8 units/acre	=	64
4.5 acres	X	8 units/acre	=	36
0.5 acre	X	6 units/acre	=	3
		TOTAL	=	103

Employment Adjustment

4 acres	X	45 jobs/acre	=	180
3 acres	X	45 jobs/acre	=	135
		TOTAL	=	315

When added to the Borough's actual growth of 31 units, the projected household growth through 2018 is 134 units. The total jobs resulting from the square footage of actual non-residential development to date is 65, resulting in projected employment growth through 2018 of 380 jobs.

(g) Municipalities that request an adjustment to household and employment growth projections shall evaluate the existing municipal land use map and inventory for areas that may develop or redevelop to identify additional opportunities to accommodate growth and corresponding affordable housing. In response to the municipal evaluation, the Council may require one or any combination of the following:

1. Zoning amendments that permit apartments or accessory apartments in accordance with N.J.A.C. *[5:94]***5:97***-6.8;

2. A market to affordable program in accordance with N.J.A.C. *[5:94]***5:97***-6.9;

3. Overlay zoning requiring inclusionary development in accordance with N.J.A.C. *[5:94]***5:97***-6.4. In approving an overlay zone, the Council may allow the existing use to continue and expand as a conforming use, but provide that where the prior use on the site is changed, the site shall produce low and moderate income housing;

4. A redevelopment area that includes affordable housing pursuant N.J.A.C. *[5:94]***5:97***-6.6, utilizing the standards in N.J.A.C. *[5:94]***5:97***-6.4(b); and/or

5. The adoption of a development fee ordinance pursuant to N.J.A.C. *[5:94]***5:97***-8.3 and a plan for the use of development fees pursuant to N.J.A.C. *[5:94]***5:97***-8.10.

(h) If upon plan evaluation review pursuant to N.J.A.C. *5:95***5:96***-10, the difference between the number of affordable units constructed or provided in a municipality and the number of units required pursuant to N.J.A.C. *[5:94]***5:97***-2.5 results in a pro-rated production shortage of 10 percent or greater or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, the Council may direct the municipality to amend its plan in conformance with N.J.A.C. *[5:95]***5:96***-14 to address the affordable housing obligation set forth in N.J.A.C. *[5:94]***5:97***-2.5.

SUBCHAPTER 6. MECHANISMS FOR ADDRESSING THE FAIR SHARE OBLIGATION

*[5:94]***5:97***-6.1 General

Subject to the formulas established in N.J.A.C. *[5:94]***5:97***-3, a municipality may implement the mechanisms contained in this subchapter for the purpose of addressing any portion of its fair share obligation.

*[5:94]***5:97***-6.2 Rehabilitation

(a) The purpose of a rehabilitation program is to renovate deficient housing units that are occupied by low- and moderate-income households.

(b) The following provisions shall apply to a rehabilitation program:

1. Upon rehabilitation, housing deficiencies shall be corrected and the unit shall comply with the New Jersey State Housing Code, N.J.A.C. 5:28. For construction projects that require the issuance of a construction permit pursuant to the Uniform Construction Code, the unit must also comply with the requirements of the Rehabilitation Subcode, N.J.A.C. 5:23-6. In these instances, the more restrictive requirements of the New Jersey State Housing Code or the Rehabilitation Subcode shall apply. For projects that require construction permits, the rehabilitated unit shall be considered complete at the date of final approval pursuant to the Uniform Construction Code.

2. Municipal rehabilitation investment for hard costs shall average at least $ 10,000 per unit, and include the rehabilitation of a major system. If the rehabilitation program is funded by an affordable housing trust fund, administrative costs shall be limited by the provisions of N.J.A.C. *[5:94]***5:97***-8.9.

3. Municipalities shall provide sufficient dollars to fund no less than half of the municipal rehabilitation component by the mid-point of substantive certification.

4. Financing of rehabilitation programs shall be structured to encourage rehabilitation and continued occupancy. Low interest rates and forgivable loans are encouraged. Leveraging of private financing is also encouraged if the result is low interest loans that encourage rehabilitation. If an owner-occupied housing unit is sold prior to the end of the controls on affordability, at least part of the loan shall be recaptured and used to rehabilitate another housing unit, unless the unit is sold to a low- or moderate-income household at an affordable price pursuant to N.J.A.C. *[5:94]***5:97***-9.

5. If the municipality structures a loan program to recapture funds, recaptured funds shall be deposited into an affordable housing trust fund pursuant to N.J.A.C. *[5:94]***5:97***-8.6 and subject to the provisions thereof.

6. A municipal rehabilitation program shall provide for the rehabilitation of rental units. If a municipality participates in a County rehabilitation program that is solely for owner occupied units, the municipality shall establish a rehabilitation program for rental units.

(c) Units in a rehabilitation program shall be exempt from N.J.A.C. *[5:94]***5:97***-9 and UHAC, but shall be administered in accordance with the following:

1. For owner-occupied units, the controls on affordability shall be for a minimum of 10 years and may be in the form of a lien recorded with the county clerk.

2. For rental units, the controls on affordability shall be for a minimum of 10 years and in the form of a deed restriction and may also include a lien, each recorded with the county clerk.

i. If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. *[5:94]***5:97***-9 and UHAC.

ii. If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. *[5:94]***5:97***-9 and UHAC.

iii. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. *[5:94]***5:97***-9.

3. Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. *[5:94]***5:97***-9 and UHAC, except that households in owner-occupied units shall be exempt from the regional asset limit.

4. The municipality shall demonstrate the capability to administer the program by designating an experienced administrative agent in accordance with N.J.A.C. *[5:95]***5:96***-18.

(d) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by the municipality with its petition for substantive certification:

1. Information regarding the rehabilitation program on forms provided by the Council;

2. Documentation demonstrating the source(s) of funding;

3. A municipal resolution appropriating funds or a resolution of intent to bond in the event of a shortfall of funds; and

4. A schedule illustrating how the rehabilitation share shall be addressed within the period of substantive certification;

(e) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by the municipality prior to the grant of substantive certification:

1. A draft or adopted rehabilitation manual that includes a description of the program procedures and administration in accordance with this section;

2. An affirmative marketing plan for the re-rental of rehabilitated rental units, in accordance with UHAC; and

3. Designation of an experienced administrative agent, including a statement of his or her qualifications, in accordance

with N.J.A.C. *[5:95]***5:96***-18.

(f) The administrator of the rehabilitation program shall maintain files on each program applicant. The files may be used in responding to monitoring requests and periodic programmatic and fiscal audits conducted by the Council, and to protect the municipality against charges of irregularity. The files shall include, at a minimum:

1. An application, including the name and address of each applicant;

2. If the applicant is not approved, the reasons for the disapproval; and

3. If the applicant is approved:

i. Proof of income eligibility;

ii. A copy of the deed of the property to be rehabilitated;

iii. Proof of homeowner insurance;

iv. Proof that the applicant's income is sufficient to meet the carrying costs of the unit;

v. Proof that the municipal lien plus the total of other liens does not exceed the market value of the unit;

vi. The initial inspection by the building inspector, demonstrating that the structure is a deficient unit;

vii. The work write-up and cost estimate;

viii. Bids by contractors, a minimum of three bids;

ix. The final contract to do the work;

x. The payment schedule;

xi. Progress inspections and reports;

xii. Change orders;

xiii. A copy of the final inspection;

xiv. The lien and/or deed on the property; and

xv. A copy of the mortgage note.

*[5:94]***5:97***-6.3 ECHO units

(a) ECHO units are modular, self-contained units erected on sites containing an existing dwelling, which may only address a municipality's rehabilitation share.

(b) The following provisions shall apply to ECHO units:

1. The municipality may purchase or lease the ECHO housing.

2. No more than 10 ECHO units may be used to address a municipality's rehabilitation share.

(c) ECHO units shall be exempt from N.J.A.C. *[5:94]***5:97***-9 and UHAC, but shall be administered in accordance with the following:

1. The units shall remain affordable for a minimum of 10 years;

2. If a unit is vacated within the 10-year period, it shall be moved to another site for an eligible household;

3. Households occupying the ECHO units shall be certified as income-eligible in accordance with N.J.A.C. *[5:94]***5:97***-9 and UHAC;

4. Rents shall be established and may increase annually based on the standards in N.J.A.C. *[5:94]***5:97***-9 and UHAC; and

5. The municipality shall demonstrate the capability to administer the program by designating an experienced administrative agent in accordance with N.J.A.C. *[5:95]***5:96***-18.

(d) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by the municipality with its petition for substantive certification:

1. Documentation demonstrating the source(s) of funding; and

2. A municipal resolution appropriating funds or a resolution of intent to bond in the event of a shortfall of funds.

(e) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by the municipality prior to the grant of substantive certification:

1. A draft or adopted operating manual that includes a description of the program procedures and administration in accordance with this section; and

2. Designation of an experienced administrative agent, including a statement of his/her qualifications, in accordance with N.J.A.C. *[5:95]***5:96***-18.

*[5:94]***5:97***-6.4 Zoning for inclusionary development

(a) Affordable housing units proposed through inclusionary development shall be provided through zoning for development that includes a financial incentive to produce the affordable housing, including but not limited to increased densities and reduced costs to the developer. Inclusionary zoning may apply to all or some zones or sites within the municipality.

(b) The following provisions shall apply to each site or zone proposed for inclusionary development:

1. All sites shall meet the site suitability criteria set forth in N.J.A.C. *[5:94]***5:97***-3.13;

2. Inclusionary zoning shall ensure sufficient incentives for the provision of affordable housing. The Council shall generally accept such zoning as providing a realistic opportunity for the creation of affordable housing when ***at least one of*** the following conditions are met:

i. The zoning provides one additional market rate unit for every affordable unit required on-site. The affordable requirement shall be calculated on the pre-existing zoning.

Example: Current zoning provides for half-acre zoning on a 50-acre tract. The municipality may require 20 percent, or *[10]* ***20*** units, of the zone to be affordable provided that *[10]* ***20*** additional market rate units are permitted. The site would then produce *[60]* ***120*** units, *[10]* ***20*** of which are affordable. *[Ten]* ***Twenty*** of the market rate units are exempt from the municipality's growth share obligation pursuant to N.J.A.C. *[5:94]***5:97**-2.5;

ii. The municipality has submitted a fully executed agreement between the municipality and the developer or redeveloper or a planning board resolution approving the development and setting forth mutually agreed to terms for the production of the required affordable housing; or

iii. The site or district was zoned on or before *[(effective date of this chapter)]* ***June 2, 2008*** with an increase in density to produce affordable housing at a minimum gross density of six units per acre with a 20 percent set-aside, a gross density of five units per acre with a 17.5 percent set-aside, a gross density of four units per acre with a 15 percent set-aside for single family detached units, or a gross density of 10 units per acre with a 15 percent set-aside for rental housing;

3. If the zoning on a site has changed subsequent to December 17, 2007, the density for the purposes of calculating the additional number of units shall be the higher of the current density permitted or the density permitted on December 17, 2007;

4. The zoning shall include at least one or more additional incentives. Such incentives include, but are not limited to, allowing alternate structure types (for example, duplex), reductions in parking standards, relief from regulatory requirements that result in cost reductions, waived or reduced fees, tax abatements and/or direct financial aid in the form of a loan or grant to subsidize affordable housing production.

5. Municipalities shall also evaluate the zoning to determine whether reduced setbacks, height and/or stories requirements, lot widths and/or lot sizes are necessary to accommodate the additional number of units pursuant to N.J.A.C. *[5:94]***5:97**-10;

6. Incentives to subsidize the creation of affordable housing available to very-low income households may be included in a developers or redevelopers agreement;

7. Inclusionary zoning may be established to encourage the production of affordable rental units by providing the option for the site to be developed as sale or rental housing with a density increase if the developer chooses to build rental housing on-site. The use of this provision shall not entitle any developer to construct fewer affordable units than required prior to the application of any such additional density increase. The Council shall generally accept such zoning as providing a realistic opportunity for the creation of affordable rental housing when ***at least one of*** the following conditions are met:

i. The zoning permits a minimum of ten units per acre and provides a density increase greater than the requirements in (b)2 above; or

ii. A fully executed agreement between the municipality and the developer or a planning board resolution approving the development and setting forth mutually agreed to terms for the production of a specified number of affordable rental units has been included with the fair share plan;

8. Inclusionary zoning ordinances shall contain a development size threshold below which affordable units shall not be required. Such a threshold shall be based on whether or not the density and set-aside required by the zoning ordinance

could result in the provision of at least one affordable unit on-site, for example, the individual parcel would accommodate less than five dwelling units where the zoning requires a 20 percent set-aside. Sites falling below such threshold shall not be required to provide affordable housing or make a payment in lieu pursuant to (c) below. However, the ordinance may require the payment of a development fee pursuant to N.J.A.C. *[5:94]***5:97***-8.3;

9. Zoning in non-residential districts shall provide an increase in permitted floor area with proportional increases in allowable height and/or impervious coverage to offset the cost of any affordable housing requirements;

10. Inclusionary zoning in mixed use districts shall incorporate residential density increases and affordable set asides based on the standards set forth in (b)3 through 5 above and/or shall provide an increase in permitted floor area with proportional increases in allowable height and/or impervious coverage to offset the cost of any on-site affordable housing requirements. Mixed use zoning ordinances shall permit both residential density increase and non-residential floor area increase options at the developer's discretion to be exercised at the beginning of the development approval process; and

11. Inclusionary zoning ordinances shall include a provision for developers to appeal the economic feasibility of such zoning to demonstrate that the increased densities and/or reduced costs do not provide an appropriate level of compensation commensurate with the amount of affordable housing required.

(c) Inclusionary zoning ordinances shall require developers to construct the required affordable units on site. Alternatively, the ordinance may allow the developer the option of providing the units elsewhere in the municipality or making a payment in lieu of providing the whole or fractional affordable units required by the zoning, subject to the following:

1. The zoning ordinance shall offer a reduced financial incentive if the payment in lieu option is exercised or the developer provides the affordable units elsewhere in the municipality, equal to an additional one-half market rate unit for every affordable unit required. The affordable requirement shall be calculated on the pre-existing zoning.

2. Payments in lieu of constructing affordable units may represent fractional affordable units provided a corresponding fractional compensatory benefit has also been provided. The affordable housing requirement shall not be rounded.

3. Municipalities may include specific criteria to be met for the development to be eligible to make a payment in lieu. Examples of such criteria include, but are not limited to, minimum development size thresholds or overriding environmental or site configuration concerns. Developments meeting the criteria established by ordinance shall, at the developer's option, be eligible to make payments in lieu of constructing affordable units.

4. If the zoning ordinance allows the developer exercising the option of a payment in lieu to retain the increased number of units permitted by replacing affordable units not constructed on site with market-rate units, all additional market-rate units shall generate a growth share obligation pursuant to N.J.A.C. *[5:94]***5:97***-2.5.

5. The amount of payments in lieu of constructing affordable units on site shall be established by ordinance and based on the cost of constructing new residential units pursuant to this section. The cost of constructing new residential units includes the sum of development hard costs, related soft costs and developer's fees pursuant to the cost containment provisions of N.J.A.C. 5:43**-2.4(a)1 through 6*** and land costs equal to 25 percent of the first quartile of new construction costs as reported to the Homeowner Warranty Program. These costs are totaled by region to reflect average construction costs. Offsetting proceeds anticipated from the sale of the unit or the capitalization of rental income may be updated and published by the Council periodically. The initial determination of these costs is as follows:

COAH	1st	Land	Construction	Total	Affordable	Subsidy

Region	Quartile	Costs	Costs	Cost	Price	Required/ Payment in Lieu Amount
1	$330,000	$82,500	$165,798	$267,332	$87,065	$180,267
2	$255,000	$63,750	$163,206	$244,491	$95,808	$148,683
3	$381,966	$95,492	$141,258	$256,824	$110,921	$145,903
4	$343,725	$85,931	$140,697	$245,937	$93,710	$152,227
5	$257,790	$64,448	$152,835	$237,471	$79,784	$156,089
6	$264,690	$66,173	$167,262	$251,163	$68,304	$182,859

6. Payments in lieu of constructing affordable units shall be deposited into an affordable housing trust fund pursuant to N.J.A.C. *[5:94]***5:97***-8.4 and subject to the provisions thereof.

7. Payments in lieu of constructing affordable housing shall not be permitted where affordable housing is not required. Zoning that does not require an affordable housing set-aside or payment in lieu may be subject to a development fee ordinance pursuant to N.J.A.C. *[5:94]***5:97***-8.3.

(d) Inclusionary zoning ordinances shall require affordable housing units to be built in accordance with the following schedule:

Percentage of Market-rate Units Completed	Minimum Percentage of Low- and Moderate-Income Units Completed
25	0
25 + 1 unit	10
50	50
75	75

90 100

(e) The Council encourages the design of inclusionary and mixed-use developments providing affordable housing to be in conformance with the general policies and implementation mechanisms regarding design in the State Development and Redevelopment Plan.

(f) Inclusionary zoning ordinances shall require, to the extent feasible, that developers fully integrate the low- and moderate-income units with the market units.

(g) Inclusionary zoning ordinances shall require that affordable units have access to all community amenities available to market-rate units that are subsidized in whole by association fees and utilize the same heating source as market units within the inclusionary development.

(h) Inclusionary zoning ordinances shall require that the first floor of all townhouse dwelling units and all other multistory dwelling units comply with N.J.A.C. *[5:94]***5:97***-3.14.

(i) The affordable units shall comply with N.J.A.C. *[5:94]***5:97***-9 and UHAC.

(j) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted with the municipality's petition for substantive certification:

1. Information regarding the development on forms provided by the Council;

2. The draft or adopted inclusionary zoning ordinance(s);

3. For site specific inclusionary zoning, a description of the site(s), including the street location, block and lot, and acreage;

4. For site specific inclusionary zoning, demonstration of the suitability of the site(s); and

5. Any agreements with developers or approvals for the development of specific property. The agreement or approval shall include specific language, addressing the following:

i. The number, tenure and type of units;

ii. Compliance with N.J.A.C. *[5:94]***5:97***-9 and UHAC;

iii. Compliance with this subchapter; and

iv. The progress points at which the developer shall coordinate with the municipal housing liaison.

(k) The following documentation shall be submitted prior to marketing the completed units:

1. A draft or adopted operating manual that includes a description of the program procedures and administration in accordance with UHAC;

2. An affirmative marketing plan in accordance with UHAC; and

3. Designation of an experienced administrative agent, including a statement of his or her qualifications, in accordance with N.J.A.C. *[5:95]***5:96***-18.

*[5:94]***5:97***-6.5 Status of sites addressing the 1987 through 1999 obligation

(a) A municipality that zoned one or more sites for inclusionary development to address the 1987 through 1999 housing obligation and included the site(s) in a previously certified fair share plan or judgment of compliance shall retain such zoning in the third round fair share plan if:

1. The Council determines that the site continues to present a realistic opportunity pursuant to (c) below; and

2. The site meets one of the following conditions:

i. The site was subject to an agreement pursuant to the Council's mediation process or part of a negotiated settlement in court; or

ii. The developer of the site has filed a development application with the municipality prior to the expiration of the second round substantive certification period or the municipal petition for substantive certification for the 1999 through *[2014]* ***2018*** period, whichever is later.

(b) Notwithstanding the provisions of (a) above, pursuant to N.J.S.A. 52:27-311(g), a municipality that has received substantive certification for the 1987 through 1999 period and which has effected the construction of its entire affordable housing obligation of that period may amend its fair share plan or zoning ordinances with respect to sites being used to address its 1987 through 1999 affordable housing obligation. Prior to amending the fair share plan or zoning ordinances, the municipality shall obtain a determination from the Council as to whether the municipality has effected construction of its entire affordable housing obligation. To make such a determination, the Council shall require the municipality to submit the filed deeds with the appropriate deed restrictions, certificates of occupancy for units constructed and evidence of the transfer of RCA funds, if applicable.

(c) A zoned but unbuilt site that was included in a housing element and fair share plan that received prior round substantive certification or a judgment of compliance shall be evaluated by the Council at the time the municipality petitions for the third round to determine if the site continues to present a realistic opportunity for the construction of affordable housing. The municipality shall submit all decisions on applications for development on any unbuilt sites included in the prior round certified fair share plan. In evaluating an unbuilt site, the Council shall consider whether the site meets the following criteria:

1. The site is a suitable site pursuant to N.J.A.C. *[5:94]***5:97***-3.13;

2. Market conditions create a realistic opportunity for the affordable housing to be constructed; and

3. Zoning on the site has been adopted prior to the filing of a third round housing element and fair share plan.

(d) Sites that no longer present a realistic opportunity shall not be eligible to address a portion of the fair share obligation. If the Council determines that the site continues to present a realistic opportunity, but can realistically accommodate a lower number of units than proposed in the fair share plan, the municipality may continue to utilize the site, but at the lower number of units.

(e) Sites that address the prior round obligation and are found to present a realistic opportunity pursuant to the provisions above shall be reviewed during plan evaluation pursuant to N.J.A.C. *[5:95]***5:96***-10. If a site has not developed, a municipality may be required to amend its plan to address the shortfall.

*[5:94]***5:97***-6.6 Redevelopment

(a) Affordable housing units proposed through the redevelopment process shall be provided pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

(b) The following provisions shall apply to affordable housing units proposed in a redevelopment area:

1. All sites shall meet the site suitability criteria set forth in N.J.A.C. *[5:94]***5:97***-3.13.

2. The municipality or redeveloper shall have control of the site. Redevelopment plans and redeveloper agreements that rely on the future use of eminent domain shall not be considered to have site control and affordable housing units within these plans shall not be eligible for use in satisfying the municipality's fair share obligation.

3. If the redevelopment area contains brownfields, the Council may require the municipality and the redeveloper to participate in OSG's Brownfield Redevelopment Interagency Team (BRIT) process.

4. The redevelopment agreement shall ensure compliance with N.J.A.C. *[5:94]***5:97***-6.4(d) through (h).

(c) The units shall comply with N.J.A.C. *[5:94]***5:97***-9 and UHAC.

(d) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted with the municipality's petition for substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. *[5:94]***5:97***-3.2(a)4:

1. Information regarding the redevelopment area on forms provided by the Council;

2. A resolution adopted by the governing body designating the area in need of redevelopment;

3. Proof that the resolution designating the area in need of redevelopment has been approved by DCA;

4. A redevelopment plan adopted by the governing body which includes the requirements for affordable housing; and

5. A description of the site, including the street location, block and lot, and acreage.

(e) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by the municipality prior to the grant of substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. *[5:94]***5:97***-3.2(a)4:

1. A demonstration of the suitability of the site, or future suitability of the site if the redevelopment area contains brownfields, as evidenced by a dated copy of the Remedial Action Work Plan (RAWP) submitted for DEP review and approval. Once approved by DEP, the municipality must provide the Council with evidence of the approved RAWP;

2. A demonstration that the municipality or redeveloper has control of the site. Control shall be in the form of outright ownership, a contract to purchase or an option on the property;

3. All agreements with redevelopers of the redevelopment area. A redeveloper's agreement that will result in the

creation of affordable housing shall include the following:

i. A description of the number, tenure and type of units;

ii. A schedule for the overall redevelopment plan, including the phasing of residential development; and

iii. Compliance with N.J.A.C. *[5:94]***5:97***-6.4(i) through *[(n)]* ***(k)**; and

4. The current status of the municipality's Workable Relocation Assistance Program (WRAP), pursuant to N.J.S.A. 52:31B-1 et seq. and 20:3-1 et seq., if applicable.

(f) The following documentation shall be submitted prior to marketing the completed units:

1. A draft or adopted operating manual that includes a description of the program procedures and administration in accordance with UHAC;

2. An affirmative marketing plan in accordance with UHAC; and

3. Designation of an experienced administrative agent, including a statement of his or her qualifications, in accordance with N.J.A.C. *[5:95]***5:96***-18.

*[5:94]***5:97***-6.7 Municipally sponsored and 100 percent affordable developments

(a) Municipally sponsored and 100 percent affordable developments include, but are not limited to:

1. Developments in which all units are available to low- and moderate-income households;

2. Units created through a municipal partnership with a non-profit or other affordable housing provider; and

3. Developments for which the municipality serves as the primary sponsor.

(b) The following provisions shall apply to municipally sponsored and 100 percent affordable developments:

1. All sites shall meet the site suitability criteria set forth in N.J.A.C. *[5:94]***5:97***-3.13.

2. The municipality or developer/sponsor shall have control or the ability to control the site(s).

3. The construction schedule shall provide for construction to begin within two years of substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. *[5:94]***5:97***-3.2(a)4.

4. The first floor of all townhouse dwelling units and of all other multistory dwelling units must comply with N.J.A.C. *[5:94]***5:97***-3.14.

(c) The units shall comply with N.J.A.C. *[5:94]***5:97***-9 and UHAC.

(d) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted with the municipality's petition for substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. *[5:94]***5:97***-3.2(a)4:

1. Information regarding the development on forms provided by the Council;

2. A demonstration that the municipality or developer/sponsor has control or has the ability to control the site(s). Control may be in the form of outright ownership, a contract to purchase or an option on the property;

3. A description of the site, including the street location, block and lot, and acreage;

4. A demonstration of the suitability of the site;

5. A request for proposals (RFP) or executed agreement, including a schedule for the construction of the units, with the developer or sponsor;

6. A pro forma for the development; and

7. A municipal resolution appropriating funds or a resolution of intent to bond in the event of a shortfall of funds.

(e) The following documentation shall be submitted prior to marketing the completed units:

1. A draft or adopted operating manual that includes a description of the program procedures and administration in accordance with UHAC;

2. An affirmative marketing plan in accordance with UHAC; and

3. Designation of an experienced administrative agent, including a statement of his or her qualifications, in accordance with N.J.A.C. *[5:95]***5:96***-18.

*[5:94]***5:97***-6.8 Accessory apartment program

(a) An accessory apartment program shall be established by ordinance to permit accessory apartments, provided the units are affordable to low- and moderate-income households. Subject to the provisions of (b)2 below, accessory apartment programs may be designed to produce only low-income units, only moderate-income units or both low- and moderate-income units.

(b) The following provisions shall apply to an accessory apartment program:

1. No more than 10 or an amount equal to 10 percent of the fair share obligation, whichever is greater, accessory apartments may be used to address the fair share obligation, unless the municipality has demonstrated a successful history of an accessory apartment program.

2. The municipality shall provide a minimum of $ 20,000 per unit to subsidize the creation of each moderate-income accessory apartment or $ 25,000 to subsidize the creation of each low-income accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.

3. There shall be water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartments.

(c) The units shall comply with N.J.A.C. *[5:94]***5:97***-9 and UHAC with the following exceptions:

1. Control periods for rental units (N.J.A.C. 5:80-26.11(a)); accessory apartments may have 10-year controls on affordability;

2. Bedroom distribution (N.J.A.C. 5:80-26.3(b) and (c)); however, the ordinance shall not restrict the number of

bedrooms per unit;

3. Low/moderate income split (N.J.A.C. 5:80-26.3(a)); subject to the provisions of (b)2 above, accessory apartments shall be exempt from the requirement that at least 50 percent of the units created shall be affordable to households earning 50 percent or less of regional median income. In programs limited only to moderate-income households, an equivalent number of housing units for low-income households shall be addressed through other mechanisms in the Fair Share Plan; and

4. Affordability average (N.J.A.C. 5:80-26.3(d) and (e)); however, the maximum rent for a moderate-income unit shall be affordable to households earning no more than 60 percent of median income and the maximum rent for a low-income unit shall be affordable to households earning no more than 44 percent of median income;

(d) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by the municipality with its petition for substantive certification:

1. Information regarding the program on forms provided by the Council;

2. A draft or adopted accessory apartment ordinance;

3. Documentation demonstrating the source(s) of funding;

4. A municipal resolution appropriating funds or a resolution of intent to bond in the event of a shortfall of funds;

5. A demonstration that the housing stock lends itself to accessory apartments; and

6. A demonstration that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartments; where the proposed location of an accessory apartment is served by individual well and/or septic system, the municipality must show that the well and/or septic system meet the appropriate DEP standards and have sufficient capacity for the additional unit.

(e) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by the municipality prior to the grant of substantive certification:

1. A draft or adopted operating manual that includes a description of the program procedures and administration in accordance with UHAC;

2. An affirmative marketing plan in accordance with UHAC; and

3. Designation of an experienced administrative agent, including a statement of his or her qualifications, in accordance with N.J.A.C. *[5:95]***5:96***-18.

*[5:94]***5:97***-6.9 Market to affordable program

(a) A market to affordable program shall include units purchased or subsidized through a written agreement with the property owner and sold or rented to low- and moderate-income households. Subject to the provisions of (b)3 below, market to affordable programs may be designed to produce only low-income units, only moderate-income units or both low- and moderate-income units.

(b) The following provisions shall apply to market to affordable programs:

1. At the time they are offered for sale or rental, eligible units may be new, pre-owned or vacant.

2. The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.

3. The municipality shall provide a minimum of $ 25,000 per unit to subsidize each moderate-income unit and/or $ 30,000 per unit to subsidize the each low-income unit, with additional subsidy depending on the market prices or rents in a municipality.

4. No more than 10 for-sale and 10 rental units may be used to address the fair share obligation, unless the municipality has demonstrated a successful history of a market to affordable program.

(c) The units shall comply with N.J.A.C. *[5:94]***5:97***-9 and UHAC with the following exceptions:

1. Bedroom distribution (N.J.A.C. 5:80-26.3(b) and (c)); however, the ordinance shall not restrict the number of bedrooms per unit;

2. Low/moderate income split (N.J.A.C. 5:80-26.3(a)); subject to the provisions of (a) above, units in a market to affordable program shall be exempt from the requirement that at least 50 percent of the units created shall be affordable to households earning 50 percent or less of regional median income. In programs limited only to moderate-income households, an equivalent number of housing units for low-income households shall be addressed through other mechanisms in the Fair Share Plan; and

3. Affordability average (N.J.A.C. 5:80-26.3(d) and (e)); however:

i. The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60 percent of median income and the maximum rent for a low-income unit shall be affordable to households earning no more than 44 percent of median income; and

ii. The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70 percent of median income and the maximum sales price for a low-income unit shall be affordable to households earning no more than 40 percent of median income.

(d) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by the municipality with its petition for substantive certification:

1. Information regarding the program on forms provided by the Council;

2. A demonstration that there are sufficient market-rate units within the municipality, as documented by the multiple listing service;

3. An estimate, based on (d)2 above, of the amount required to subsidize typical for-sale and/or rental units, including any anticipated rehabilitation costs;

4. Documentation demonstrating the source(s) of funding; and

5. A municipal resolution appropriating funds or a resolution of intent to bond in the event of a shortfall of funds.

(e) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by the municipality prior to the grant of substantive certification:

1. A draft or adopted operating manual that includes a description of the program procedures and administration in accordance with UHAC;

2. An affirmative marketing plan in accordance with UHAC; and

3. Designation of an experienced administrative agent, including a statement of his or her qualifications, in accordance with N.J.A.C. *[5:95]***5:96***-18.

*[5:94]***5:97***-6.10 Supportive and special needs housing

(a) Supportive and special needs housing includes, but is not limited to: residential health care facilities as regulated by the New Jersey Department of Health and Senior Services or DCA; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; permanent supportive housing; and supportive shared living housing. Long term health care facilities including nursing homes, and Class A, B, C, D, and E boarding homes do not qualify as supportive and special needs housing.

(b) The following provisions shall apply to supportive and special needs housing:

1. The unit of credit for group homes, residential health care facilities, and shared living housing shall be the bedroom.

2. The unit of credit for permanent supportive housing shall be the unit.

3. Supportive and special needs housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to N.J.A.C. *[5:94]***5:97***-3.8.

4. All bedrooms and/or units shall be affordable to low-income households.

5. Units shall serve populations 18 and over.

6. All sites for supportive and special needs housing shall meet the site suitability criteria set forth in N.J.A.C. *[5:94]***5:97***-3.13.

7. The municipality or developer/sponsor shall have control or the ability to control the site(s).

(c) The units shall comply with N.J.A.C. *[5:94]***5:97***-9 and UHAC with the following exceptions:

1. Affirmative marketing (N.J.A.C. 5:80-26.15); however, group homes, permanent supportive housing and supportive shared living housing shall be affirmatively marketed to individuals with special needs in accordance with a plan approved by the Council's Executive Director;

2. Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3); and

3. Occupancy standards (N.J.A.C. 5:80-26.4(c)) shall be limited to one person per bedroom for residential health care facilities, group homes, and supportive shared living housing.

(d) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by the municipality with its petition for substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. *[5:94]***5:97***-3.2(a)4:

1. Information regarding the supportive and/or special needs housing on forms provided by the Council;

2. A description of the site, including the street location, block and lot, and acreage;

3. A demonstration of the suitability of the site;

4. A demonstration that the municipality or provider has control or has the ability to control the site(s); control may be in the form of outright ownership, a contract to purchase or an option on the property;

5. An executed agreement, including a schedule for the construction of the supportive and/or special needs housing, with the provider, sponsor or developer;

6. A pro forma for the supportive and/or special needs housing;

7. Documentation demonstrating the source(s) of funding; and

8. A municipal resolution appropriating funds or a resolution of intent to bond in the event of a shortfall of funds.

(e) The following documentation shall be submitted prior to marketing the completed units:

1. An affirmative marketing plan in accordance with (c)1 above; and

2. If applicable, proof that the supportive and/or special needs housing is regulated by the New Jersey Department of Health and Senior Services, the New Jersey Department of Human Services or another State agency in accordance with the requirements of this section, which includes validation of the number of bedrooms or units in which low- or moderate-income occupants reside.

*[5:94]***5:97***-6.11 Assisted living residence

(a) An assisted living residence is a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available. All or a designated number of apartments in the facility shall be restricted to low- and moderate-income households.

(b) The following provisions shall apply to assisted living residences:

1. The unit of credit shall be the apartment. However, a two-bedroom apartment shall be eligible for two units of credit if it is *[occupied by]* **restricted to** two unrelated individuals.

2. A recipient of a Medicaid waiver shall automatically qualify as a low- or moderate-income household.

3. Assisted living units are considered age-restricted housing in a Fair Share Plan and shall be included with the maximum number of units that may be age-restricted pursuant to N.J.A.C. *[5:94]***5:97***-3.8.

4. The municipality shall execute a memorandum of understanding with the Agency.

5. Low- and moderate-income residents cannot be charged any upfront fees.

6. All sites for assisted living residences shall meet the site suitability criteria set forth in N.J.A.C. *[5:94]***5:97***-3.13.

7. The municipality or developer/sponsor shall have control or the ability to control the site(s).

(c) The units shall comply with N.J.A.C. *[5:94]***5:97***-9 and UHAC with the following exceptions:

1. Affirmative marketing (N.J.A.C. 5:80-26.15); however, the units shall be affirmatively marketed to individuals with special needs in accordance with a plan approved by the Council's Executive Director;

2. The deed restriction may be on the facility, rather than individual apartments or rooms;

3. Low/moderate income split and affordability average (N.J.A.C. 5:80-26.3(a), (d) and (e)); only if all of the affordable units are affordable to households at a maximum of 60 percent of median income; and

4. Tenant income eligibility (N.J.A.C. 5:80-26.13(b)); up to 80 percent of an applicant's gross income may be used for rent, food and services based on occupancy type and the affordable unit must receive the same basic services as required by the Agency's underwriting guidelines and financing policies. The cost of non-housing related services shall not exceed one and two-thirds times the rent established for each unit.

(d) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by the municipality with its petition for substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. *[5:94]***5:97***-3.2(a)4:

1. Information regarding the facility on forms provided by the Council;

2. A description of the site, including the street location, block and lot, and acreage;

3. A demonstration that the municipality or provider has control or has the ability to control the site(s); control shall be in the form of outright ownership, a contract to purchase or an option on the property;

4. A demonstration of the suitability of the site;

5. An executed agreement, including a schedule for the construction of the assisted living residence, with the provider, sponsor or developer;

6. A pro forma for the facility;

7. Documentation demonstrating the source(s) of funding; and

8. A municipal resolution appropriating funds or a resolution of intent to bond in the event of a shortfall of funds.

(e) An executed Memorandum of Understanding with the Agency shall be submitted by the municipality prior to the grant of substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. *[5:94]***5:97***-3.2(a)4.

*[5:94]***5:97***-6.12 Regional contribution agreement

(a) A municipality may transfer up to 50 percent of its prior round obligation and/or growth share obligation to another municipality by means of a contractual agreement in accordance with the formulas in N.J.A.C. *[5:94]***5:97***-3 and the procedures set forth at N.J.A.C. *[5:94]***5:97***-7.

(b) A municipality may not transfer any portion of its rehabilitation share.

(c) Previously approved RCAs shall be reviewed pursuant to the criteria set forth in N.J.A.C. *[5:94]***5:97***-4.4.

*[5:94]***5:97***-6.13 Affordable housing partnership program

(a) An affordable housing partnership is a voluntary agreement by which two or more municipalities cooperate to build low- and moderate-income housing units.

(b) The following provisions shall apply to affordable housing partnership programs:

1. The municipalities shall be located within the same housing region.

2. Partnering municipalities may propose and shall meet the requirements of any affordable housing mechanism outlined in this subchapter, except for N.J.A.C. *[5:94]***5:97***-6.2, 6.3 and 6.12.

3. The municipalities shall set forth the number of credits each municipality will be allotted. No credit shall be given to more than one municipality for the same unit.

4. Each municipality shall contribute resources, including, but not limited to, funding, sewer, water, and land.

5. Units constructed in another municipality shall fall within the maximum number of units permitted to be provided through an RCA, consistent with the provisions of N.J.A.C. *[5:94]***5:97***-3.

(c) The units shall comply with N.J.A.C. *[5:94]***5:97***-9 and UHAC, unless exempted pursuant to the applicable section of this subchapter for the proposed mechanism.

(d) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by each municipality, as applicable, with its petition for substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. *[5:94]***5:97***-3.2(a)4:

1. Information regarding the partnership program on forms provided by the Council;

2. A draft or executed agreement between all municipalities, which in addition to the requirements of (b)3 and 4 above, includes a schedule for the creation of the units and designation of the municipality responsible for monitoring the partnership program; and

3. All documentation required for the proposed mechanism, pursuant to the applicable section of this subchapter.

*[5:94]***5:97***-6.14 Extension of expiring controls

(a) A municipality may address a portion of its growth share obligation through the extension of affordability controls in accordance with N.J.A.C. *[5:94]***5:97***-9 and UHAC, subject to the following:

1. The unit meets the criteria for prior-cycle or post-1986 credits set forth in N.J.A.C. *[5:94]***5:97***-4.2 or 4.3;

2. The affordability controls for the unit are scheduled to expire during the 1999 through 2018 period;

3. The municipality shall obtain a continuing certificate of occupancy or a certified statement from the municipal building inspector stating that the restricted unit meets all code standards; and

4. If a unit requires repair and/or rehabilitation work in order to receive a continuing certificate of occupancy or certified

statement from the municipal building inspector, the municipality shall fund and complete the work. A municipality may utilize its affordable housing trust fund to purchase the unit and/or complete the necessary repair and/or rehabilitation work.

(b) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by each municipality, as applicable, with its petition for substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. *[5:94]***5:97***-3.2(a)4:

1. Information regarding the development and specific units on forms provided by the Council;

2. A written commitment to extend controls from the owner, or evidence that the controls have been extended in accordance with UHAC;

3. The proposed or filed deed restriction for the extended control period;

4. A pro-forma for any proposed acquisition and/or rehabilitation costs;

5. Documentation demonstrating the source(s) of funding; and

6. A municipal resolution appropriating funds or a resolution of intent to bond in the event of a shortfall of funds.

(c) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by the municipality prior to the grant of substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. *[5:94]***5:97***-3.2(a)4:

1. A draft or adopted operating manual that includes a description of the program procedures and administration in accordance with UHAC;

2. An affirmative marketing plan in accordance with UHAC; and

3. Designation of an experienced administrative agent, including a statement of his or her qualifications, in accordance with N.J.A.C. *[5:95]***5:96***-18.

*[5:94]***5:97***-6.15 Other innovative approaches

(a) A municipality may propose innovative programs or mechanisms, or any combination of mechanisms included in this subchapter, for the creation of affordable housing, provided that the following performance standards can be achieved and clearly demonstrated:

1. The units shall comply with N.J.A.C. *[5:94]***5:97***-9 and UHAC;

2. All sites to be developed with new units shall meet the site suitability criteria set forth in N.J.A.C. *[5:94]***5:97***-3.13;

3. Rehabilitated and converted units shall meet all local building codes;

4. The municipality shall demonstrate source(s) of funding; and

5. Units shall not be restricted to youth under 18 years of age.

SUBCHAPTER 7. REGIONAL CONTRIBUTION AGREEMENTS

*[5:94]***5:97***-7.1 General provisions

(a) A municipality that intends to enter into regional contribution agreements (RCAs) as a receiving municipality shall notify the Council of its interest and of any proposed conditions or requirements for its participation.

(b) The Council shall maintain current lists of municipalities which have notified it of the intent to enter into RCAs as receiving municipalities and shall provide copies of such lists to potential sending municipalities as requested.

(c) A municipality that is a defendant in an exclusionary zoning lawsuit or that is under the jurisdiction of the court for its housing obligation may request permission from the court to fulfill a portion of its fair share obligation by entering into an RCA. Pursuant to the Act, the court shall request that the Council review and make a recommendation concerning the proposed RCA.

(d) The minimum per unit transfer amount for each housing region, which may be reconsidered by the Council periodically, shall be the following:

Housing Region	Amount Per Unit
1	$80,000
2	$67,000
3	$67,000
4	$70,000
5	$71,000
6	$80,000

(e) If resolutions of intent or a signed agreement were adopted by both the sending and receiving municipalities between December 20, 2004 and December 17, 2007, the per unit transfer amount may be less than the minimums in (d) above, but not less than $ 35,000 per unit, provided the project plan is feasible pursuant to N.J.A.C. *[5:94]***5:97***-7.6. If resolutions of intent or a signed agreement were adopted by both municipalities on or before December 20, 2004, the per unit transfer amount may be less than the minimums in (d) above, but not less than $ 25,000 per unit, provided the project plan is feasible pursuant to N.J.A.C. *[5:94]***5:97***-7.6. If the RCA resolutions or contracts are amended to add additional units after December 17, 2007, the additional units shall be transferred at the minimums in (d) above.

*[5:94]***5:97***-7.2 Submission requirements

(a) The sending municipality shall notify its county planning board of its intent to enter into an RCA prior to submission of its plan to the Council.

(b) Statements of intent shall be submitted at the time of petition or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. *[5:94]***5:97***-3.2(a)4 by the sending municipality and the receiving municipality and shall be in the form of a duly adopted resolution. Resolutions of intent are not binding upon either municipality and shall not preclude a receiving municipality from negotiating with any other potential sending municipality or renegotiating the per unit transfer amount.

(c) A draft contractual agreement shall be submitted to the Council by the sending municipality at the time of petition or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. *[5:94]***5:97***-3.2(a)4 and shall specify, at a minimum, the receiving municipality, the number of units to be transferred, the type of housing activity anticipated by the receiving municipality and the amount of compensation to be paid to the receiving municipality in return for such a transfer. The Council's Executive Director may require revisions to the initial contract upon review of the RCA and prior to the Council's approval.

(d) The receiving municipality's completed RCA Project Plan shall be submitted to the Council by the receiving municipality no later than 90 days from the date the sending municipality's petition is submitted to the Council or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. *[5:94]***5:97***-3.2(a)4.

(e) The sending municipality shall submit documentation demonstrating source(s) of funding.

*[5:94]***5:97***-7.3 Terms

(a) All draft RCA contracts shall specify payment schedules that conform to a construction or rehabilitation schedule, relate to the receiving municipality's ability to deliver housing units in a timely fashion, and take place within the period of substantive certification of the sending municipality. For RCAs that include a scattered site rehabilitation program, all funds must be transferred one year prior to expiration of substantive certification.

(b) The Council may, in its discretion, limit the number of RCA units that may be transferred to a receiving municipality based on a determination of the receiving municipality's capacity to administer the RCA units. The Council shall consider the municipality's past experience, if any, in administering affordable housing programs.

(c) At least 50 percent of all units accepted by a receiving municipality shall be affordable to low income households. In the case of RCAs that include a scattered site rehabilitation program, the receiving municipality shall ensure, as best as practicable, that 50 percent of the rehabilitated units are occupied by low income households.

(d) All units created or rehabilitated with RCA funds shall comply with N.J.A.C. *[5:94]***5:97***-6, N.J.A.C. *[5:94]***5:97***-9 and UHAC, as applicable.

(e) No receiving municipality shall receive credit toward its fair share obligation for units provided pursuant to an RCA.

(f) No municipality shall receive credit for any units provided for in the receiving municipality in excess of the units transferred pursuant to the RCA.

(g) No municipality shall receive rental bonuses for rental units created with RCA funds.

*[5:94]***5:97***-7.4 Sending municipality

(a) The number of age-restricted units that may be transferred shall be limited according to the sending municipality's age-restricted maximum pursuant to N.J.A.C. *[5:94]***5:97***-3.8.

(b) No funds shall be transferred by the sending municipality until COAH has reviewed and signed the escrow agreement required by N.J.A.C. *[5:94]***5:97***-7.5(g).

*[5:94]***5:97***-7.5 Receiving municipality

(a) A receiving municipality may use funds transferred through an RCA for any affordable housing activity including, but not limited to, the mechanisms set forth in N.J.A.C. *[5:94]***5:97***-6. Rental obligations required by N.J.A.C. *[5:94]***5:97***-3.4 or portions thereof that are transferred to a receiving municipality via an RCA must either create new rental housing units or meet the criteria for reconstruction.

(b) If a receiving municipality intends to accept RCA units in excess of its rehabilitation share for a scattered site rehabilitation program, it shall demonstrate a need for rehabilitation by documenting an existing waiting list of eligible applicants or conducting an exterior housing survey in a form provided by the Council. The Council shall determine the proportion of deteriorated or substandard housing units that are occupied by low- and moderate-income households by applying the appropriate "Low-Moderate Deterioration Share" number found in chapter Appendix B.

(c) The use of all funds shall be specified in an RCA Project Plan and shall be subject to Council approval. If there are funds in excess of the amount necessary to implement the RCA, the balance shall be used within the receiving municipality to produce additional low- and moderate-income housing units or for capital or other expenditures benefiting low- and moderate-income households.

(d) A maximum of $ 6,000 per unit transferred may be expended on administration in the receiving municipality. These funds shall only be spent on expenses that are directly related to the administration of the RCA program and units. If additional units above the number transferred are created or rehabilitated, the receiving municipality may submit a request to COAH to expend additional funds on administration. The request shall document the need for the additional funds.

(e) For RCA scattered site rehabilitation programs, the cumulative cost of major systems shall be no less than 50 percent of the hard costs for the unit.

(f) RCA funds shall be deposited into a separate interest bearing escrow account for each RCA.

(g) A receiving municipality shall enter into an escrow agreement with the Council and the bank that holds the escrow account, whereby the Council has access to the escrow account.

(h) A receiving municipality shall create the position of RCA Administrator pursuant to N.J.A.C. *[5:95]***5:96***-19 and, subject to the Council's approval, appoint a municipal employee to serve in that position.

*[5:94]***5:97***-7.6 Review by the Agency

(a) The Agency shall review and provide the Council with a recommendation regarding the financial feasibility of the RCA Project Plan prior to the RCA receiving the Council's approval.

(b) The receiving municipality shall submit a completed RCA Project Plan application to the Agency delineating the manner in which the receiving municipality shall create or rehabilitate low- and moderate-income housing in response to the RCA. The RCA Project Plan shall be in such a form and contain such information as the Council or the Agency may require, and shall include, but not be limited to the names of the project(s) and/or programs(s) and the number of

affordable units funded by the RCA, development costs, additional sources of funding for the projects or programs, applicability to COAH and UHAC rules and the agent responsible for administering the affordable units. The Council or the Agency may impose time limitations for the submission of an RCA Project Plan or any updates or conditions thereto.

(c) The Agency may undertake such review as is necessary, including scheduling meetings or hearings and requiring further information, studies or reports, in order to render a timely report on the financial feasibility of the proposed plan for the Council. Failure of the receiving municipality to promptly or properly comply with the requirements of the Agency may result in the Agency's refusal to recommend the approval of the proposed project.

*[5:94]***5:97***-7.7 Review and approval by county planning board(s)

(a) The receiving municipality's county planning board shall review and provide the Council with a recommendation regarding whether or not the RCA is in accordance with sound comprehensive regional planning and the goals and objectives of the State Development and Redevelopment Plan and provides a realistic opportunity for low- and moderate-income housing within convenient access to employment opportunities prior to the RCA receiving the Council's approval.

(b) A completed RCA Project Plan application, and the master plans and zoning ordinances of the sending and receiving municipalities, shall be forwarded to the county planning board of the county in which the receiving municipality is located for review and recommendation. The county planning board of the receiving municipality shall make a determination as to whether or not the RCA is in accordance with sound comprehensive regional planning and the goals and objectives of the State Development and Redevelopment Plan and provides a realistic opportunity for low- and moderate-income housing within convenient access to employment opportunities. If the RCA is between two municipalities in different counties, the county planning board of the receiving municipality may confer with or request information from the county planning board of the sending municipality.

(c) All determinations of a county planning board shall be by resolution and shall be accompanied by a report detailing the reasons for the determination. No fee shall be paid to the county planning board for its review pursuant to this section.

(d) The county planning board or agency shall file its review and recommendation with the Council within 45 days of receipt of a complete application for review. For good cause shown, a 15-day extension may be granted.

*[5:94]***5:97***-7.8 Review and approval by the Council

(a) *[The Council shall approve an RCA upon finding]* ***An RCA shall be approved upon a finding by the Council*** that:

1. The project provides a realistic opportunity for low- and moderate-income housing within convenient access to employment opportunities as determined by the county planning board;

2. The project is consistent with sound comprehensive regional planning and the goals, policies and objectives of the State Development and Redevelopment Plan as determined by the county planning board; and

3. The receiving municipality's project is a financially feasible means of achieving the purposes of the RCA, as determined by the Agency.

(b) Upon recommendation of the Agency, the Council may approve, as part of the RCA, a provision that the time limitations for contractual guarantees or resale controls for low- and moderate-income units included in the proposed

RCA Project Plan may be for less than 30 years if the Agency determines that modification is necessary to assure the economic viability of the project.

(c) The Council shall approve all RCAs by resolution. The Council shall set forth in its resolution a schedule for the contributions to be appropriated annually by the sending municipality. A copy of the adopted resolution shall be filed promptly with the Division of Local Government Services of the Department of Community Affairs. The Director of the Division, pursuant to N.J.S.A. 52:27D-312(d), shall thereafter not approve an annual budget of a sending municipality if it does not include appropriations necessary to meet the terms of the resolution.

(d) An RCA that has been approved by the Council may be executed once the Council grants substantive certification to the sending municipality.

*[5:94]***5:97***-7.9 Monitoring

The RCA Administrator of the receiving municipality shall submit monitoring reports to the Council and with the Agency setting forth fiscal accountability and progress in implementing the projects to be produced under the RCA. These reports shall be submitted at such time and in such form as the Council and the Agency may require.

*[5:94]***5:97***-7.10 Enforcement

(a) The Council shall take such actions as may be necessary to enforce an RCA with respect to the timely implementation of a project by the receiving municipality. Such actions may include, but are not limited to, one or more of the following:

1. Initiating a lawsuit to enforce an RCA contract;

2. Preventing a delinquent receiving municipality from entering into further RCAs for a specified period of time;

3. Ordering a sending municipality to temporarily or permanently cease payments to a receiving municipality;

[3.] ***4.*** Recommending that the Agency and DCA withhold further assistance available under the Act from the receiving municipality;

[4.] ***5.*** Ordering the receiving municipality's bank to cease disbursements from the RCA escrow account;

[5.] ***6.*** Ordering the receiving municipality to amend its RCA Project Plan to include viable alternative housing activity;

[6.] ***7.*** Directing the use of RCA funds to eligible housing activity in the municipality, county, or region; or

[7.] ***8.*** Such other actions as the Council may determine necessary.

SUBCHAPTER 8. AFFORDABLE HOUSING TRUST FUNDS

*[5:94]***5:97***-8.1 Purpose

(a) Affordable housing trust funds are intended to better enable municipalities to meet the low- and moderate-income housing needs in their municipality and region.

(b) Affordable housing trust funds may contain mandatory development fees, contributions from developers as a result

of negotiated agreements, payments in lieu of constructing affordable units on sites zoned for affordable housing, funds in a barrier free escrow, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines and application fees, and any other funds collected by the municipality in connection with its affordable housing programs, as permitted by the Council.

(c) A municipality may impose, collect and spend affordable housing trust funds only through participation in the Council's substantive certification process or through a comprehensive review designed to achieve a judgment of compliance.

(d) No municipality under the Council's jurisdiction shall spend affordable housing trust funds unless the Council has approved a plan for spending such funds in conformance with N.J.A.C. *[5:94]***5:97***-8.10 and *[5:95]***5:96***-5.3.

(e) The rules in this subchapter shall govern those municipalities that petition for substantive certification. The Council shall review development fee ordinances and spending plans and monitor affordable housing trust funds upon the request of the court.

*[5:94]***5:97***-8.2 Account requirements

(a) All affordable housing trust funds shall be deposited in a separate, interest-bearing account. In establishing the account, the municipality shall provide written authorization, in the form of a three-party escrow agreement between the municipality, the bank and the Council, to permit the Council to direct the disbursement of the funds as provided for in N.J.A.C. *[5:94]***5:97***-8.13(b). This authorization shall be submitted to the Council within seven days from the opening of the trust fund account.

(b) With the approval of the Council and of the Division of Local Government Services, the municipality may invest its affordable housing trust fund in the State of New Jersey cash management fund, provided that the amount of money in the cash management fund that comprises the funds and income attributable to such funds shall at all times be identifiable. The municipality shall provide written authorization, in the form of a three-party escrow agreement between the municipality, the bank which holds the account linked to the cash management fund, and the Council, to permit the Council to direct the disbursement of development fees as provided for in N.J.A.C. *[5:94]***5:97***-8.13(b). This authorization shall be submitted to the Council within seven days from the opening of the trust fund account.

(c) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Council.

*[5:94]***5:97***-8.3 Development fee ordinances

(a) The New Jersey Supreme Court, in *Holmdel Builders Association v. Holmdel Township*, 121 *N.J.* 550 (1990), determined that mandatory development fees are both statutorily and constitutionally permissible. The Court directed the Council to promulgate appropriate development fee rules specifying, among other things, the standards for these development fees.

(b) No municipality, except municipalities seeking to achieve or that have received a judgment of compliance, shall impose or collect development fees unless the municipality has petitioned the Council with an adopted Housing Element and Fair Share Plan and the Council has approved the municipality's development fee ordinance pursuant to N.J.A.C. *[5:95]***5:96***-5.1.

(c) Residential development fees *[may be imposed pursuant to one, but not both, of the following:

1. Fees]* shall be a maximum of one and one half percent of the equalized assessed value (EAV), provided no increased

density is permitted*[; or]***.***

*[2. Fees may be subject to sliding scale maximum percentages that vary with the equalized assessed value of the residential development, provided no increase in density has been provided. If a sliding scale assessment of fees is used, the maximum fees shall be established by tiers based on the quartile housing value of new construction by region as reported to the Homeowner Warranty Program and middle-income housing shall be exempt. Maximum fees permitted shall be one half of one percent for new construction with an equalized assessed value at or below the tier one amount, one percent for new construction with an equalized assessed value at or below the tier two amount, one and one half percent for new construction with an equalized assessed value at or below the tier three amount and two percent for new construction with an equalized assessed above the tier three amount. If the sliding scale development fee ordinance imposes a fee on additions and alterations, a set percentage, not to exceed one and one half percent of the equalized assessed value, may be imposed on the increase in value that results from the addition or alteration. The Council shall publish tiered ranges of new construction values by region annually. The following table illustrates initial regional tiers:

Sliding Scale Development Fee Maximum Percentages

Region	Middle-Income Exemption	Tier 1 0.5 percent of EAV	Tier 2 One percent of EAV	Tier 3 1.5 percent of EAV	Tier 4 Two percent of EAV
1	Up to $217,040	Up to $330,000	$330,001 to $433,125	$433,126 to $637,500	Over $637,500
2	Up to $176,721	Up to $255,000	$255,001 to $449,900	$449,001 to $700,000	Over $700,000
3	Up to $268,154	Up to $381,966	$381,967 to $470,000	$470,001 to $666,545	Over $666,545
4	Up to $231,657	Up to $343,725	$343,726 to $429,949	$429,950 to $575,000	Over $575,000
5	Up to $200,532	Up to $257, $257,790	$257,791 to $329,139	$329,140 to $439,978	Over $439,978
6	Up to $234,051	Up to $264,690	$264,691 to $365,990	$365,991 to $555,000	Over $555,000]*

[3.] ***2.*** When a municipality approves an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance), the municipality may impose a development fee of up to six percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

[4.] ***3.*** Fees may be imposed on the construction of new residential development and additions and alterations to existing development. Ordinances governing the imposition of development fees shall clearly indicate which types of development shall be subject to the imposition of development fees. New construction fees shall be based on the equalized assessed value of land and improvements. Fees that result from additions and alterations shall be based on the increase in equalized assessed value that results from the addition or alteration.

(d) Non-residential development fees may be imposed pursuant to the following:

1. Fees shall be a maximum of three percent of the equalized assessed value.

2. When a municipality approves an increase in floor area pursuant to N.J.S.A. 40:55D-70d(4) (known as a "d" variance), the municipality may impose a development fee of up to six percent on the additional floor area realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two-year period preceding the filing of the variance application.

3. Fees may be imposed on the construction of new non-residential development and additions and alterations to existing development. Ordinances governing the imposition of development fees shall clearly indicate which types of development shall be subject to the imposition of development fees. New construction fees shall be based on the equalized assessed value of land and improvements. Fees that result from additions and alterations shall be based on the increase in equalized assessed value that results from the addition or alteration.

(e) The following are eligible exactions, ineligible exactions and exemptions:

1. Affordable housing developments and developments where the developer has made a payment in lieu of constructing affordable units shall be exempt from development fees.

2. Development fees may be imposed and collected when an existing structure is expanded, undergoes a change to a more intense use, or is demolished and replaced. The development fee that may be imposed and collected shall be calculated on the increase in the equalized assessed value.

3. Developments that have received preliminary or final approval prior to the *[imposition]* ***adoption*** of a municipal development fee ordinance shall be exempt from development fees.

4. Municipalities may exempt specific types of development from fees or may impose lower fees for specific types of development, provided each classification of development is addressed consistently. For example, all retail development, all development by non-profit organizations, hospitals, or educational institutions may be exempt from the imposition of fees.

5. Municipalities may exempt specific areas or zones of the municipality from the imposition of fees or reduce fees in order to promote development in specific areas of the municipality. For example, all development north of Main Street may be exempt from the imposition of fees.

(f) Municipalities may collect 100 percent of the development fee on any specific development at the issuance of the certificate of occupancy. As an alternative, municipalities may collect up to 50 percent of the development fee at the time of issuance of the building permit. The remaining portion may be collected at the issuance of the certificate of occupancy.

(g) Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by the municipality. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.

(h) Any ordinance adopted by a municipality for the purpose of imposing and collecting development fees shall provide that, in the event any of the conditions described in N.J.A.C. *[5:94]***5:97***-8.13(a) occur, the Council shall be authorized, on behalf of the municipality, to direct the manner in which all funds in the affordable housing trust fund shall be expended.

(i) A municipality that collects or anticipates collecting development fees must identify the funds on its monitoring report pursuant to N.J.A.C. *[5:94]***5:97***-8.12 and include a plan for the use of the funds in its spending plan pursuant to N.J.A.C. *[5:94]***5:97***-8.10.

*[5:94]***5:97***-8.4 Payments in lieu of constructing affordable units on site

(a) A municipality may, as an option to the on-site construction of affordable housing otherwise required by ordinance, provide for a payment in lieu of construction subject to the requirements of this section and N.J.A.C. *[5:94]***5:97***-6.4.

(b) The amount of payments in lieu of constructing affordable units on site shall be established by ordinance and consistent with the amounts detailed in N.J.A.C. *[5:94]***5:97***-6.4*[(g)]*****(c)***.

(c) Payments in lieu of constructing affordable units on residential and mixed-use sites shall only be used to fund eligible affordable housing activities within the municipality. ***However, payments-in-lieu of construction from non-residential sites where residential development is not a permitted use may be used for funding regional compliance mechanisms.***

(d) A municipality that collects or anticipates collecting payments in lieu of construction must identify the funds on its monitoring report pursuant to N.J.A.C. *[5:94]***5:97***-8.12 and include a plan for the use of the funds in its spending plan pursuant to N.J.A.C. *[5:94]***5:97***-8.10.

*[5:94]***5:97***-8.5 Barrier free escrow

An affordable housing trust fund may contain fees collected to adapt affordable unit entrances to be accessible in accordance with the Act and N.J.A.C. *[5:94]***5:97***-3.14. The municipality shall set forth the mechanism by which it will collect and distribute funds intended to convert adaptable entrances. Funds collected for this purpose must at all times be identifiable from other funds. A municipality that collects or anticipates collecting funds to adapt affordable unit entrances must identify the funds on its monitoring report pursuant to N.J.A.C. *[5:94]***5:97***-8.12.

*[5:94]***5:97***-8.6 Other funds

An affordable housing trust fund may also contain recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines and application fees, and any other funds collected by the municipality in connection with its affordable housing programs. A municipality that collects or

anticipates collecting such fees must identify the funds on its monitoring report pursuant to N.J.A.C. *[5:94]***5:97***-8.12 and include a plan for the use of the funds in its spending plan pursuant to N.J.A.C. *[5:94]***5:97***-8.10.

*[5:94]***5:97***-8.7 Use of funds for housing activity

(a) A municipality may use affordable housing trust funds for any housing activity as itemized in the spending plan and approved by the Council. Such activities include, but are not limited to:

1. A rehabilitation program;

2. New construction of affordable housing units and related development costs; in the case of inclusionary developments, eligible costs shall be pro-rated based on the proportion of affordable housing units included in the development;

3. Extensions or improvements of roads and infrastructure directly serving affordable housing development sites; in the case of inclusionary developments, costs shall be pro-rated based on the proportion of affordable housing units included in the development;

4. RCAs, except that payments in lieu of construction collected from residential and mixed-use development may not be used for this purpose;

5. Acquisition and/or improvement of land to be used for affordable housing;

6. Purchase of existing market rate or affordable housing for the purpose of maintaining or implementing affordability controls, such as in the event of a foreclosure;

7. Accessory apartment, market to affordable, or affordable housing partnership programs;

8. ECHO housing and related repair or unit relocation costs;

9. Green building strategies designed to be cost-saving for low- and moderate-income households, either for new construction that is not funded by other sources, or as part of necessary maintenance or repair of existing units;

10. Maintenance and repair of affordable housing units;

11. Repayment of municipal bonds issued to finance low- and moderate-income housing activity; and

12. Any other activity as specified in the approved spending plan.

(b) Municipalities are encouraged to use affordable housing trust funds to attract other funds such as, but not limited to, available public subsidies and funds from private lending institutions.

(c) Municipalities are encouraged to work cooperatively with residential and/or non-residential developers subject to development fees to identify specific affordable housing projects within the municipality for funding from the affordable housing trust fund.

*[5:94]***5:97***-8.8 Use of funds for affordability assistance

(a) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability

assistance to low- and moderate-income households, at least half of which shall be available to low- and moderate-income households in affordable units included in the municipality's Fair Share Plan. One-third of the affordability assistance portion shall be used to provide affordability assistance to very low income households.

1. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.

2. Affordability assistance for very low income households may include offering a subsidy to developers of inclusionary or 100 percent affordable developments or buying down the cost of low- or moderate-income units in a municipal Fair Share Plan to make them affordable to very low income households.

Example: A 100-unit development in a municipality consists of 80 market-rate rental units, 10 moderate-income rental units and 10 low-income rental units. Two of the low-income units are priced to be affordable to a household earning 30 percent of regional median income (RMI). The remaining eight low-income units are priced to be affordable to households earning 45 percent of RMI. The rental rate established for the units priced at a 45 percent level of affordability is $ 603.00 per month while the rental rate established for units priced at a 30 percent level of affordability is $ 353.00 for a difference of $ 250.00 per month or $ 3,000 per year. Assuming a capitalization rate of 8.5 percent would establish a 30-year present value of $ 35,294 on the reduced rental income. Therefore, a developer might consider re-pricing low-income units to provide additional very-low income units in exchange for an up-front lump sum payment of $ 35,294 for each unit re-priced.

(b) Subject to the approval of the Council, municipalities may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. *[5:95]***5:96***-18.

(c) If the municipality demonstrates that there are no units for which affordability assistance programs can be offered, this requirement may be waived.

*[5:94]***5:97***-8.9 Use of funds for administrative expenses

(a) No more than 20 percent of all affordable housing trust funds, exclusive of the fees used to fund an RCA and barrier free escrow funds, shall be expended on administration.

(b) Administrative expenses can include salaries and benefits for municipal employees or consultant fees necessary to develop or implement an affordable housing program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with Council monitoring requirements.

(c) Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

*[5:94]***5:97***-8.10 Spending plans

(a) A plan to spend affordable housing trust funds shall include the following:

1. A projection of revenues anticipated from imposing fees on development, based on pending, approved and anticipated developments and historic development activity;

2. A projection of revenues anticipated from other sources, including contributions from developers as a result of

negotiated agreements, payments in lieu of constructing affordable units on sites zoned for affordable housing, funds from the sale of units with extinguished controls, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, and interest earned;

3. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;

4. A description of the anticipated use of all affordable housing trust funds pursuant to N.J.A.C. *[5:94]***5:97***-8.7, 8.8 and 8.9;

5. A schedule for the expenditure of all affordable housing trust funds;

6. If applicable, a schedule for the creation or rehabilitation of housing units;

7. If the municipality is supporting or sponsoring public sector or non-profit construction of housing, a pro-forma statement of the anticipated costs and revenues associated with the development, consistent with standards required by the Agency in its review of funding applications;

8. If the municipality maintains an existing affordable housing trust fund, a plan to spend the trust fund balance as of the date of its third round petition within four years of the Council's approval of the spending plan, or in accordance with an implementation schedule approved by the Council;

9. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues are not sufficient to implement the plan; and

10. A description of the anticipated use of excess affordable housing trust funds, in the event more funds than anticipated are collected, or projected funds exceed the amount necessary for satisfying the municipal affordable housing obligation.

(b) All spending plans are subject to the review and approval of the Council pursuant to N.J.A.C. *[5:95]***5:96***-5.3.

*[5:94]***5:97***-8.11 Consideration for mechanisms not in the adopted Fair Share Plan

(a) A municipality may request authorization for expenditure of affordable housing trust funds on emergent affordable housing mechanisms not included in the municipal Fair Share Plan, in the form of an amendment to the spending plan.

(b) In addition to the requirements for approval of a spending plan or amendment to an approved spending plan set forth at N.J.A.C. *[5:95]***5:96***-5, the resolution submitted by the municipality shall include a certification that the affordable housing opportunity addresses the Council's criteria set forth in N.J.A.C. *[5:94]***5:97***-6, and the municipality shall submit information regarding the proposed mechanism in a format to be provided by the Council.

(c) The municipality shall submit an amendment to its Fair Share Plan to include the mechanism at the earlier of two years after the Council's approval of the spending plan amendment or the next planned amendment to the Fair Share Plan resulting from plan evaluation review pursuant to N.J.A.C. *[5:95]***5:96***-10.

(d) The municipality shall submit monitoring pursuant to N.J.A.C. *[5:95]***5:96***-11 relating to the affordable units created using affordable housing trust funds.

*[5:94]***5:97***-8.12 Monitoring

All municipalities under the Council's jurisdiction that maintain affordable housing trust funds shall submit monitoring

to the Council. At a minimum, the monitoring shall include an accounting of any housing trust fund activity, including the source and amount of funds collected, the amount and purpose for which any funds have been expended, and the status of the plan to spend the remaining balance pursuant to N.J.A.C. *[5:94]***5:97***-8.10(a)8. At the request of the Court, the Council will also conduct monitoring of affordable housing trust funds maintained by municipalities subject to the terms of a judgment of compliance. These reports shall be submitted by the Municipal Housing Liaison at such time and in such form as the Council requires.

*[5:94]***5:97***-8.13 Enforcement

(a) The municipality's ability to impose and collect funds and maintain its affordable housing trust fund shall be conditioned on compliance with all requirements of this subchapter, which the Council shall monitor at least annually. Occurrence of any of the following may result in the Council taking an action pursuant to (b) below:

1. Failure to meet deadlines for information required by the Council in its review of a Housing Element and Fair Share Plan, development fee ordinance or plan for spending fees;

2. Failure to address the Council's conditions for approval of a plan to spend funds within the deadlines imposed by the Council;

3. Failure to address the Council's conditions for substantive certification within deadlines imposed by the Council;

4. Failure to submit accurate monitoring reports pursuant to N.J.A.C. *[5:94]***5:97***-8.12 within the time limits imposed by the Council;

5. Failure to implement the spending plan and expend the funds within the time schedules specified in the spending plan, including the requirement to spend the remaining trust fund balance pursuant to N.J.A.C. *[5:94]***5:97***-8.10(a)8;

6. Expenditure of funds on activities not approved by the Council;

7. Revocation of certification; or

8. Other good cause demonstrating that the funds are not being used for the approved purpose.

(b) In the event any of the conditions described in (a) above occur, the Council shall notify the municipality, including the chief financial officer, and the service list that such a condition has occurred and direct the municipality to remedy the condition.

1. If the municipality does not remedy the condition within the time period specified by the Council, the municipality shall cease imposition, collection, and expenditure of affordable housing trust funds.

2. Upon notifying the bank in accordance with the escrow agreement pursuant to N.J.A.C. *[5:94]***5:97***-8.2, the Council shall direct the manner in which all funds in the affordable housing trust fund shall be expended.

3. In its direction of affordable housing trust funds, the Council shall first consider mechanisms included in the municipality's Fair Share Plan.

4. In the event that funding is not needed for mechanisms included in the municipality's Fair Share Plan, the Council shall solicit proposals from developers and organizations to create or rehabilitate affordable housing in compliance with the Council's regulations. In its solicitation, review, and selection of proposals, the Council shall act in consultation with

the DCA Division of Housing.

5. To the extent practicable, the Council shall assign funds from the affordable housing trust fund to mechanisms planned within the municipality that generated the revenues or within close proximity to the municipality, such as within the county or region.

6. When the Council takes action pursuant to this section and additional units are created or rehabilitated, those units shall be eligible for credit in the municipality in which the units are constructed or rehabilitated.

(c) Any party that presents evidence to the Council's satisfaction that one or more of the conditions listed in (a) above exist in a particular municipality may request Council action pursuant to (b) above in the form of a motion pursuant to N.J.A.C. *[5:95]***5:96***-13. The motion may also include a proposal to create or rehabilitate affordable housing, which shall be considered by the Council consistent with (b)3 and 4 above, and may include directing the municipality to expend funds on the proposal.

(d) The Council may also revoke a development fee ordinance approval for any municipality that fails to comply with the requirements of this subchapter. Where such approval has been revoked, the Council shall not approve an ordinance permitting such municipality to impose or collect development fees for the remainder of the substantive certification period or judgment of compliance.

(e) Neither loss of funds from the affordable housing trust fund account, nor loss of the municipality's ability to impose and collect development fees shall alter the municipality's responsibilities pursuant to substantive certification or a court ordered judgment of compliance.

*[5:94]***5:97***-8.14 Ongoing collection of fees and maintenance of the affordable housing trust fund

The ability for all municipalities to impose and collect fees and maintain an affordable housing trust fund shall expire with their substantive certification or judgment of compliance unless the municipality has petitioned the Council for substantive certification of a Housing Element and Fair Share Plan that addresses its succeeding affordable housing obligation, and has received the Council's approval of its development fee ordinance. Municipalities that fail to renew their ability to impose and collect development fees and maintain an affordable housing trust fund prior to the expiration of their substantive certification or judgment of compliance may resume the imposition and collection of development fees by complying with the requirements of this section. A municipality shall not impose a development fee on a development that receives preliminary or final approval after the expiration of substantive certification or a judgment of compliance, nor shall a municipality retroactively impose a development fee on such a development. A municipality shall not expend affordable housing trust funds after the expiration of substantive certification or a judgment of compliance.

SUBCHAPTER 9. ADMINISTRATION OF AFFORDABLE UNITS

*[5:94]***5:97***-9.1 Applicability of UHAC

(a) Affordable housing included in a municipal Fair Share Plan shall comply with UHAC. Exemptions from UHAC are provided in this chapter and UHAC. Municipal housing liaisons, administrative agents, and RCA administrators shall be governed by the applicable provisions of N.J.A.C. *[5:95]* **5:96*** and UHAC.

(b) If the cost of administering and/or advertising affordable units is to be a developer's responsibility, the requirement shall be a condition of the municipal planning board or zoning board approval and required by ordinance.

*[5:94]***5:97***-9.2 Regional income limits

(a) Administrative agents shall utilize the regional income limits established by the Council for the purpose of pricing affordable units and determining income eligibility of households.

(b) Regional income limits shall be established by the Council based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households in each housing region. This quotient represents the regional weighted average of median income for a household of four. This regional weighted average is adjusted by household size based on multipliers used by HUD to adjust median income by household size.

(c) The Council shall annually adopt the regional income limits based on household size. In no event shall the income limits be less than the previous year.

*[5:94]***5:97***-9.3 Establishing sale prices and rents of units

(a) In establishing sale prices and rents of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by the Council.

(b) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

(c) The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.

SUBCHAPTER 10. COST GENERATION AND DEVELOPMENT REVIEW PROCESS

*[5:94]***5:97***-10.1 Purpose and scope

The Act incorporates the need to eliminate unnecessary cost generating features from municipal land use ordinances as a requirement of substantive certification. In order to receive and retain substantive certification, municipalities shall eliminate development standards and requirements that are not essential to protect the public welfare and shall design municipal ordinances to expedite municipal decisions on affordable housing development applications.

*[5:94]***5:97***-10.2 Unnecessary cost generating requirements

(a) In the development of municipal ordinances, a municipality shall use the Residential Site Improvement Standards, N.J.A.C. 5:21, as a frame of reference, where applicable. A municipality that wishes to impose more stringent standards shall bear the burden of justifying the need for such standards. To ensure that its municipal ordinances are not detrimental to the production of affordable housing or the financial feasibility of an affordable housing development, a municipality shall give special attention to:

1. Ensuring that municipal zoning requirements work to promote affordable housing developments by achieving the density and set-aside necessary to address the municipal fair share obligation. Examples of such requirements include but are not limited to: building setbacks, height and/or stories, spacing between buildings, and impervious surface standards;

2. Requirements to provide oversized water and sewer mains, as well as stormwater management provisions including culverts, to accommodate future development without a reasonable prospect for reimbursement;

3. Excessive open space, recreation, landscape, buffering, tree replacement and reforestation requirements; and

4. Excessive road width, pavement specifications and parking requirements.

(b) Municipal Housing Elements and Fair Share Plans, and resolutions of approval as necessary, shall allow for phased construction and phased performance guarantees for on-site, off-site and off-tract improvements required of affordable housing developments.

(c) The Council shall not permit restrictions on the bedroom mix of the market-rate units within an inclusionary development.

(d) Failure to remove unnecessary cost generative requirements on an affordable housing development application shall be considered a reason for dismissal from the Council's jurisdiction or revocation of substantive certification.

*[5:94]***5:97***-10.3 Development application procedures

(a) Affordable housing developments that are included in a Housing Element and Fair Share Plan have proceeded through a public process. Therefore, the focus of municipal development application review shall not be whether the sites are properly zoned. The focus shall be whether the design of the affordable housing development is consistent with the municipal zoning, subdivision and site plan ordinances. In order to expedite the review of development applications, municipalities shall cooperate with developers of affordable housing developments in scheduling pre-application conferences. Municipal boards shall schedule regular and special monthly meetings as needed and provide ample time at these meetings to consider the merits of an affordable housing development application. The goal of such a schedule is to ensure that development applications are acted upon within time limits mandated in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

(b) Municipalities shall cooperate with developers of affordable housing developments in granting reasonable variances and waivers necessary to construct the affordable housing development.

(c) Municipalities shall cooperate with developers by expeditiously endorsing applications to other governmental agencies that require review and approval of that agency. Such endorsements shall be simultaneously submitted to the Council.

(d) Failure of the municipality to take any of the above actions on an affordable housing development application shall be considered a reason for dismissal from the Council's jurisdiction or revocation of substantive certification.

*[5:94]***5:97***-10.4 Special studies/escrow accounts

(a) It is common for municipalities to require developers of affordable housing developments to conduct special studies related to the fiscal, traffic and environmental impacts of proposed inclusionary developments. These studies are then reviewed by municipal professionals who are paid from escrow accounts funded by the developer of affordable housing developments as a requirement of the municipal review of the development application pursuant to N.J.S.A. 40:55D-1 et seq. The Council has determined that these studies shall not be used to alter the permitted density, unless as part of a use variance application pursuant to N.J.S.A. 40:55D-70d(4) or (5). Such studies may be used to foster proper design and to determine pro-rata off-tract improvement costs, but may not be excessive. The Council has also determined that it is unnecessary for developers of affordable housing developments to pay for both the preparation of such a study and

to pay into an escrow account for subsequent municipal review. Therefore, municipalities that receive substantive certification shall offer developers of affordable housing developments the option of preparing fiscal, traffic and environmental impact studies or choosing a consultant from a list of at least six professionals prepared by the municipality to prepare the studies. If the developer chooses a consultant from the municipally prepared list, the developer and municipality shall rely on the consultant's recommendations and no other reports shall be prepared.

(b) Fees to review development applications shall be estimated prior to payment of filing fees. Developers shall be entitled to review all charges against any escrowed fees and be provided with monthly accounting reports upon request as provided in N.J.S.A. 40:55D-1 et seq.

*[5:94]***5:97***-10.5 Developer relief

(a) Developers of affordable housing sites in conformance with a Housing Element and Fair Share Plan may seek relief from the Council if the municipality and the developer cannot agree on specific standards that apply to an affordable housing site.

(b) The developer of the affordable housing site may request the Council to provide a mediator to resolve the dispute. The resulting mediation shall not require a transfer to the Office of Administrative Law pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

(c) Developers of affordable housing sites in conformance with a Housing Element and Fair Share Plan may seek an administrative order requiring the municipality to remove unnecessary cost generating requirements or to expedite the municipal review of a development application by filing a motion pursuant to N.J.A.C. *[5:95]***5:96***-13. Developers need not request mediation pursuant to (b) above in order to file such a motion. The Council may hear such a motion concurrent with any such mediation notwithstanding the provisions of N.J.A.C. *[5:95]***5:96***-13.1(d).

(d) Developers of affordable housing sites in conformance with a Housing Element and Fair Share Plan may request the Council to assist in expeditious processing or review provided the site meets the site suitability standards pursuant to N.J.A.C. *[5:94]***5:97***-3.13. The Council shall strive for interagency cooperation in assisting the municipality and developer to move the affordable housing development forward expeditiously.

(e) If, after a hearing conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and failure to comply with any resultant administrative order, the Council determines that a municipality has delayed action on a development application for an affordable housing site in conformance with the Housing Element and Fair Share Plan, or has required unnecessary cost generating requirements or obstructed the construction of an affordable housing site that is in conformance with a Housing Element and Fair Share Plan, the Council shall dismiss the municipality from the Council's jurisdiction or revoke its substantive certification.

APPENDIX A

GROWTH SHARE RATIO METHODOLOGY

COUNCIL ON AFFORDABLE HOUSING (COAH)

CONTENTS

SECONDARY SOURCES OF SUPPLY

ADJUSTED PROJECTED NEED

HOUSING UNIT GROWTH (2004-2018)

EMPLOYMENT GROWTH (2004-2018)

STATEWIDE GROWTH SHARE RATIOS

MUNICIPAL-LEVEL PROJECTIONS

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INTRODUCTION

In COAH's Third Round Rules, municipalities incur affordable housing obligations when local housing units and jobs increase. The extent to which they do - each municipality's "growth share" for housing unit and employment growth - are determined by two Statewide Growth Share Ratios, developed using the methodology described in detail in this Appendix. <1>

The numerator in both of these ratios is New Jersey's projected affordable housing need. This total is calculated based on an estimate of future housing need as a percentage of future housing overall growth, as was done in the previously adopted Third Round Substantive Rules. We use the most recent and best data available and estimate that future need will grow as it has in the past. This assumes that in the period for which we are projecting need (between 1999 and 2018), low- and moderate-income households (those with incomes below 80 percent of their regional medians) represent the same percentage of all households as they do in 2000 (according to the 2000 U.S. Census 5-Percent Public Use Microdata Sample (PUMS)). Low- and moderate-income owners with significant assets - those who have paid off their mortgages and spend less than 38 percent of their income on other housing costs - are removed from this total, and

low- and moderate-income residents of noninstitutional group quarters are added to this total, to reach a "Total Projected Need (1999-2018)" of 131,297 households.

Some of these households are accommodated by supply responses including "Secondary Sources of Supply." These adjustments to the composition and value of the housing stock include filtering and residential conversions (which can decrease the demand for affordable housing) and demolitions (which can increase the demand for affordable housing). In all, these Secondary Sources of Supply are expected to reduce New Jersey's projected affordable housing need by 15,631 units, or from 131,297 to 115,666.

This numerator (115,666) is then divided by two denominators - projected housing unit growth from 2004 to 2018 and projected employment growth from 2004 to 2018 - to create two Growth Share Ratios, one for housing and one for employment. Projected housing unit growth incorporates the expected increase in units over this time period as well as the predicted number of replacement units required. Also, units required to deliver prior round obligations are subtracted from this total <2>, resulting in a Statewide figure for housing unit growth of 324,813. Projected job growth is simply based on the difference between Econsult's estimates for 2004 and 2018 employment, or 722,886.

Assigning 60 percent of projected affordable housing need to projected housing unit growth from 2004 to 2018, and the remainder (40 percent) to projected net employment growth from 2004 to 2018, results in the following growth share ratios:

New Jersey

60 percent/40 percent Split	One Affordable Unit among Five Units Produced One Affordable Unit for 16 Jobs Created

LOW- AND MODERATE-INCOME HOUSING NEED (1999-2018)

The first step in understanding low- and moderate-income housing need in New Jersey is identifying the share of households with incomes below 80 percent of their regional medians - those households qualifying for housing assistance through federal and state programs. This methodology then assumes that the same portion of New Jersey's new households will be below 80 percent of their regional median incomes as were below 80 percent of their regional median according to the 2000 U.S. Census 5-Percent Public Use Microdata Sample (PUMS), released in August 2003. (This database is comprised of a sample of State housing units and includes characteristics about those units and the households that reside in them. It is especially valuable for identifying low- and moderate-income households since it reports household size as well as income level; both are necessary to compare incomes to COAH-published figures for low- and moderate-income category limits.)

Econsult projections predict that New Jersey will add 377,190 households between 1999 and 2018. An analysis of the PUMS data suggests that 37.7 percent of these households, or 142,201, will have low- or moderate-incomes.

This figure is refined to isolate low- and moderate-income households in need of affordable housing. Low- and moderate-income owners who have paid off their mortgages and currently spend less than 38 percent of their household income on housing costs are removed from this total. Low- and moderate-income residents of noninstitutional group quarters, as well as an estimate of vacant units, are added to this total. These calculations result in a Total Projected Need (1999-2018) of 131,071. (As described in subsequent sections, Secondary Sources of Supply reduce this need

number.)

As described in detail in chapter Appendix F, Econsult bases its housing unit projections on data from the New Jersey Labor and Workforce Development (NJLWD). While other projections exist, most notably from the Metropolitan Planning Organization (MPO), Econsult uses NJLWD's population and employment projections as the county control totals because these forecasts are based on state of the art methodology consistently applied across all State of New Jersey counties. Econsult also relies on data from the U.S. Census Bureau's 1990 and 2000 Census and 2002 American Community Survey, and on land capacity estimates provided by Rutgers' National Center for Neighborhood & Brownfields Redevelopment (NCNBR). The Rutgers team identifies New Jersey's available land - the amount of undeveloped and unconstrained land available for future development on a statewide basis as of 2002 - using spatial files from the Office of Smart Growth (OSG), Department of Environmental Protection (DEP), and the New Jersey Department of Agriculture. (This is described separately in Appendix F.) This estimate of vacant land is then converted into estimates of residential and non-residential development capacity at the municipal level.

Using this information, Econsult constructs housing unit projections for municipalities based on county-wide projections, communities' historical growth rates, physical growth capacities, and expected growth rates (a function of the relationship between local build-out levels and historical growth rates) in the State's 566 municipalities. This technique produces housing unit totals going backward to 1999 and going forward to 2018.

Area	Population	Average Household	Households
----	(1999)	Size (2000)	(1999)
	------	----------	------
New Jersey	8,359,592	2.68	3,116,867

The number of households in 2018 is derived from Econsult's housing unit estimates for 1999 and 2018. In 1999, total household figure - 3,116,867 - was just over five percent lower than the total housing unit figure. This implies that roughly five percent of the State's housing units (3,294,671 in all) were vacant that year. We assume that this same vacancy rate will exist in 2018 as well, when the number of households will again be approximately five percent less than the number of housing units.

Area	Housing Units	Vacancy Rate	Households
----	(2018)	----------	(2018)
	------		------
New Jersey	3,693,378	5.4 percent	3,494,057

Therefore, according to Econsult's projections, New Jersey is expected to add the following number of households between 1999 and 2018:

COAH Region		Households		Household Change
		1999	2018	1999-2018
1	Northeast Region	783,927	818,694	34,767
2	Northwest Region	689,671	733,077	43,406
3	West Central Region	424,610	471,092	46,482
4	East Central Region	560,127	683,012	122,885
5	Southwest Region	440,239	494,539	54,300
6	South-Southwest Region	218,515	293,643	75,128
Total		3,116,867	3,494,057	377,190

What portion of these households will have low or moderate incomes - incomes below 80 percent of their regional medians? To answer this question, we rely on the 2000 U.S. Census 5-Percent Public Use Microdata Sample (PUMS) and the COAH regions established in earlier rounds. (An analysis by the Center for Urban Policy Research (CUPR), a component of Rutgers University's Edward J. Bloustein School of Planning and Public Policy, and reported in the previously adopted Third Round Substantive Rules, justified retaining the COAH Regions used in earlier rounds. That research found the linkages between counties in the same region to be stronger than between counties in different regions. For one thing, at least two-thirds (and in some cases nearly all) workers not working at home commuted somewhere else within their region of residence (pages 60-61). Their work also found "significant social, economic, and income interrelationships" between counties within a given region (page 60). Additionally, these COAH Regions "comport with State Plan principles and land designations" (page 61).)

Each PUMS record includes a "PUMS Area" to describe the geographic location of that housing unit and household. To fit PUMS records to COAH regions, we group PUMS Areas in the following ways:

COAH Region		PUMS Area	County
1	Northeast	301, 302, 303, 304, 305, 306	Bergen
		400, 501, 502	Passaic
		601, 602, 701, 702, 703	Hudson

COAH Region		PUMS Area	County
		1600	Sussex
2	Northwest	1301, 1302, 1401, 1402, 1403, 1404	Essex
		1501, 1502, 1503, 1504	Morris
		1700	Warren
		1800, 1901, 1902, 1903	Union
3	West Central	800	Hunterdon
		901, 902, 903, 904, 905	Middlesex
		1001, 1002	Somerset
4	East Central	1101, 1102, 1103, 1104, 1105	Monmouth
		1201, 1202, 1203	Ocean
		2301, 2302	Mercer
5	Southwest	2001, 2002, 2003	Burlington
		2101, 2102, 2103, 2104	Camden
		2201	Gloucester
6	South-Southwest	101, 102	Atlantic
		200	Cape May
		2400	Cumberland

PUMS Area 2202 is partially in Gloucester County (and COAH Region 5) and partially in Salem County (and COAH

Region 6). Since county information is not available in the PUMS dataset, records in 2202 are assigned to regions and compared to regional median incomes using methods described in further detail below.

To determine what portion of New Jersey households have incomes below 80 percent of their regional median income, this methodology arrays all households by size and income, and uses the regional median income levels adopted by COAH on April 5, 2000, for households including one to eight persons (see table). (The regional median incomes for eight-person households were used for any household including more than eight people.)

COAH Region		Household Size			
		1	2	3	4
1	Northeast	$ 37,426	$ 42,772	$ 48,118	$ 53,465
2	Northwest	$ 39,536	$ 45,184	$ 50,832	$ 56,480
3	West Central	$ 45,248	$ 51,712	$ 58,176	$ 64,640
4	East Central	$ 36,123	$ 41,283	$ 46,444	$ 51,604
5	Southwest	$ 32,368	$ 36,992	$ 41,616	$ 46,240
6	South-Southwest	$ 27,978	$ 31,974	$ 35,971	$ 39,968

COAH Region		Household Size			
		5	6	7	8
1	Northeast	$ 57,742	$ 62,019	$ 66,296	$ 70,574
2	Northwest	$ 60,998	$ 65,517	$ 70,035	$ 74,554
3	West Central	$ 69,811	$ 74,982	$ 80,154	$ 85,325
4	East Central	$ 55,732	$ 59,861	$ 63,989	$ 68,118
5	Southwest	$ 49,939	$ 53,638	$ 57,338	$ 61,037
6	South-Southwest	$ 43,166	$ 46,363	$ 49,560	$ 52,758

Since those records in PUMS Area 2202 could not be assigned to a COAH Region, income levels for these records are calculated twice. First, Region 5 income levels are used to identify a *low* number of low- and moderate-income households. Second, Region 6 income levels (below Region 5 levels) are used to identify a *high* number of low- and moderate-income households. To ensure that all low- and moderate-income households are included in this analysis, the table below shows *high* results.

Steps	PUMS Records
1. Households <80 percent of Regional Median Income	62,421
2. All PUMS Records (Housing Units Only)	165,513
3. Percent Housing Need Interim (Step 1/Step 2)	37.7 percent

According to these procedures, low- and moderate-income households represent 37.7 percent of all households in the State. If 37.7 percent of the households New Jersey is expected to add between 1999 and 2018 similarly qualify for affordable housing, Econsult's projections imply that 142,201 additional households will qualify for affordable housing over the nineteen year period.

COAH Region		Projected Need
1	Northeast Region	13,107
2	Northwest Region	16,364
3	West Central Region	17,524
4	East Central Region	46,328
5	Southwest Region	20,471
6	South-Southwest Region	28,323
Total		142,201

To refine this number and further identify households in need of affordable housing, this methodology then removes qualifying households likely to have significant assets - owner households with incomes below 80 percent of their regional median income whose mortgages were fully paid off and who spent less than 38 percent of their income on housing costs, as reported in the PUMS file. (This replicates the methodology used to develop the previously adopted

Third Round Substantive Rules.) According to the PUMS file, these owners represent 17 percent of all households statewide and the following percentages in each region below 80 percent of their regional median income in the state:

COAH Region		Percent Paid Down
1	Northeast Region	12 percent
2	Northwest Region	13 percent
3	West Central Region	20 percent
4	East Central Region	25 percent
5	Southwest Region	20 percent
6	South-Southwest Region	20 percent
Total		17 percent

We assume that owners without mortgages and housing costs below 38 percent represent the same portion of "Initial Projected Need" households. These households are then subtracted from the "Initial Projected Need" to get a "Projected Need Subtotal."

COAH Region		Projected Need	Paid-Down	Subtotal
1	Northeast Region	13,107	-1,537	11,570
2	Northwest Region	16,364	-2,119	14,245
3	West Central Region	17,524	-3,451	14,073
4	East Central Region	46,328	-11,699	34,628
5	Southwest Region	20,471	-4,135	16,336
6	South-Southwest Region	28,323	-5,681	22,642
Total		142,201	-24,350	117,85

COAH Region	Projected Need	Paid-Down	Subtotal

While owners with significant assets reduce the overall need, demand from low- and moderate-income households in group quarters increases the overall need. The 1990 and 2000 Censuses specify the populations in group quarters, making it possible to identify individuals living in correctional facilities, nursing homes, mental hospitals, juvenile facilities, college dormitories, military quarters, and other noninstitutional group quarters. Residents living in "other" noninstitutional group quarters are included in this methodology. (The 1990 Census further highlights individuals living in emergency shelters or on the street; the 2000 Census considers these individuals to be living in "other" noninstitutional group quarters. To make the two years' numbers compatible, individuals living in emergency shelters or on the street are added to those in "other" group quarters in 1990.)

Between 1990 and 2000, the number of individuals in "other" noninstitutional group quarters increased by 11,297. We assume that every two residents contribute to the demand for one additional unit of housing. Therefore, the 11,297 additional residents in these group quarters represent the demand for 5,649 additional housing units. If the number of residents in these group quarters increases at the same rate in the future, the overall demand for housing by residents in "other" noninsitutional group quarters is expected to be 11,015 (or 5,649 x 1.95) over the 19-year period from 1999 to 2018.

Since income data is not available for residents of group quarters, we assume that 80 percent have low or moderate incomes. (This assumption was also used by CUPR (see footnote 14 on page 160 of Appendix A of the previously adopted Third Round Substantive Rules).) Therefore, the additional demand for affordable housing units by individuals in "other" noninstitutional group quarters between 1999 and 2018 is expected to be 8,812 Statewide.

COAH Region		Population in "Other" Noninstitutional Group Quarters		Change	Additional Demand (1990-2000)	Additional Demand (1999-2018)	Additional Affordable Housing Demand (1999-2018)
		1990	2000	1990-2000			
1	Northeast Region	5,528	9,059	3,531	1,766	3,443	2,754
2	Northwest Region	8,355	7,437	-918	-459	-895	-716
3	West Central Region	1,950	5,236	3,286	1,643	3,204	2,563
4	East Central Region	4,272	5,080	808	404	788	630

COAH Region		Population in "Other" Noninstitutional Group Quarters		Change	Additional Demand (1990-2000)	Additional Demand (1999-2018)	Additional Affordable Housing Demand (1999-2018)
		1990	2000	1990-2000			
5	Southwest Region	2,713	4,769	2,056	1,028	2,005	1,604
6	South-Southwest Region	2,024	4,558	2,534	1,267	2,471	1,977
Total		24,842	36,139	11,297	5,649	11,015	8,812

Vacancies in the housing stock available to low- and moderate-income households also increase the need. This vacancy rate (more limited than that used to transform housing unit numbers into household totals) is derived by taking the number of non-seasonal vacant units as a percentage of all housing units in 2000 (according to the Census). These rates (roughly four percent Statewide) added 4,365 units to the subtotal numbers.

COAH Region		Vacancy Rate (excluding Seasonal Properties)	Vacant Units
1	Northeast Region	2.9 percent	339
2	Northwest Region	4.0 percent	565
3	West Central Region	2.4 percent	334
4	East Central Region	4.5 percent	1,554
5	Southwest Region	5.2 percent	842
6	South-Southwest Region	5.9 percent	1,334

COAH Region	Vacancy Rate (excluding Seasonal Properties)	Vacant Units
Total	3.9 percent	4,635

Together, these steps result in a "Total Projected Need" number of 131,297 for the state as a whole.

	COAH Region	Projected Need (37.7 percent of Household Change)	Paid-Down	Vacancy Rate (excluding Seasonal Properties)	Additional Demand from Group Quarters	Total Projected Need (1999-2018)
1	Northeast Region	13,107	-1,537	339	2,754	14,663
2	Northwest Region	16,364	-2,119	565	-716	14,094
3	West Central Region	17,524	-3,451	334	2,563	16,970
4	East Central Region	46,328	-11,699	1,554	630	36,812
5	Southwest Region	20,471	-4,135	842	1,604	18,782
6	South-Southwest Region	28,323	-5,681	1,334	1,977	25,953
Total		142,201	-24,350	4,635	8,812	131,297

SECONDARY SOURCES OF SUPPLY

Secondary Sources of Housing Supply refers to those housing market adjustments that change the composition and value of the housing stock. This methodology reviews three types of adjustments: filtering, residential conversions, and demolitions. <3>

"Filtering" is the process by which units decline in value and therefore become affordable to lower-income households. This process begins when higher end housing is built by private developers. When higher-income consumers move into these new units, the demand for their prior units declines, causing values or rents to drop; the units then become affordable to consumers at a lower income level. In this way, the construction of new, market-rate housing may reduce affordable housing needs by freeing up additional existing units for purchase or rent by moderate-income households. Filtering is most likely to take place in housing markets containing sound housing undergoing significant turnover and in close proximity to substantial new development.

According to this Econsult analysis (these methods are described in further detail in Appendix F), 47,306 units are expected to filter down to households of lower incomes between 1999 and 2018. Half (50 percent) of these filtered units (23,626 units) are located in suburban communities (as defined by the Rutgers University Center for Urban Policy Research). This suburban share of filtering is included in this analysis.

COAH Region		Filtering (1999-2018)
1	Northeast	5,254
2	Northwest	2,111
3	West Central	610
4	East Central	2,459
5	Southwest	7,428
6	South-Southwest	5,764
Total		23,626

Next, a residential conversion is the creation of a new dwelling unit from an existing structure (either residential or non-residential). Residential conversions occur when renovations increase the number of units in existing structures. The U.S. Department of Housing and Urban Development (HUD) considers residential conversions to be a significant source of housing supply to low- and moderate-income families. This primarily occurs in markets where new housing construction is not meeting the demand for smaller units.

This methodology (replicating that resulting in the previously adopted Third Round Substantive Rules) defines residential conversions as the change in total units, accounting for new construction (as indicated by certificates of occupancy) and demolitions. According to the U.S. Census, the number of housing units increased by 234,965 in New

Jersey between 1990 and 2000. Our analysis of municipal-level data from the New Jersey Construction Reporter finds that, during the same time period, 233,916 certificates of occupancy were issued. According to state-level data reported in the previously adopted Third Round Substantive Rules (Appendix A, page 86), 26,212 residential properties were demolished between 1990 and 1999. Subtracting certificates of occupancy and adding demolitions to the total change in housing units (234,965 - 233,916 + 26,212) results in a difference of 27,261 units; these units were likely added through residential conversions.

This methodology estimates that 19.5 percent of converted units (5,316 units) are priced for low- and moderate-income households (since 19.5 percent of New Jersey's housing stock was affordable to these households in 2000). <4> Projecting these 10-year trends out 19 and a half years (from mid-1999 through 2018) suggests that 10,366 units will be created as a result of residential conversions throughout New Jersey.

COAH Region		Residential Conversion (1999-2018)
1	Northeast	1,163
2	Northwest	1,283
3	West Central	1,782
4	East Central	3,144
5	Southwest	2,079
6	South-Southwest	915
Total		10,366

Unlike filtering and residential conversions, demolitions, which occur as land values outpace housing utility and dilapidated building conditions reach hazardous levels, represent a source of additional *demand* (not supply). In other words, while filtering and residential conversions can create affordable units, demolitions eliminate affordable units. By removing housing from the existing stock, particularly that portion of the stock affordable and available to low-income households, demolitions increase the demand for those units that remain.

In order to estimate the number of demolitions likely to occur through 2018, this analysis collects demolition totals for all New Jersey municipalities from the New Jersey Construction Reporter for the years 1996 through 2006. On average, 4,829 properties were demolished annually during this time period.

COAH Region		Average Annual Number of Demolitions (1996-2006)
1	Northeast	907
2	Northwest	1,245
3	West Central	315
4	East Central	811
5	Southwest	504
6	South-Southwest	1,046
Total		4,829

These annual averages are multiplied by 14 to determine the total number of demolitions expected to occur between 2004 and 2018 (used to estimate the number of units required to replace the loss of depreciated units, a component of housing unit growth described in the next section) and by 19.5 to determine the total number of demolitions expected to occur between the middle of 1999 and the end of 2018 (used as a secondary source of supply in this section).

As with residential conversions, this methodology assumes that 19.5 percent of demolitions directly affect low- and moderate-income households by removing low-cost units from the housing stock.

COAH Region		All Demolitions (1999-2018)	Demolitions affecting Low- and Moderate-Income Households Households (19.5 percent of All Demolitions)
1	Northeast Region	17,685	3,449
2	Northwest Region	24,279	4,734
3	West Central Region	6,146	1,198
4	East Central Region	15,816	3,084
5	Southwest Region	9,835	1,918
6	South-Southwest Region	20,397	3,977

COAH Region	All Demolitions (1999-2018)	Demolitions affecting Low- and Moderate-Income Households Households (19.5 percent of All Demolitions)
Total	94,158	18,361

Together these methods result in the following number of affordable housing units provided by secondary sources of supply for the State as a whole:

COAH Region		Filtering (1999-2018)	Residential Conversions (1999-2018)	Demolitions (1999-2018)	Total of Secondary Sources
1	Northeast	5,254	1,163	-3,449	2,969
2	Northwest	2,111	1,283	-4,734	-1,340
3	West Central	610	1,782	-1,198	1,194
4	East Central	2,459	3,144	-3,084	2,519
5	Southwest	7,428	2,079	-1,918	7,589
6	South-Southwest	5,764	915	-3,977	2,701
Total		23,626	10,366	-18,361	15,631

ADJUSTED PROJECTED NEED

Ultimately, affordable housing need is the Total Projected Need (based on household growth) *minus* the Secondary Sources of Supply already responding to a portion of that need.

COAH Region		Projected Affordable Housing Need (1999-2018)	Secondary Sources (1999-2018)	Adjusted Projected Need (1999-2018)
1	Northeast			

COAH Region		Projected Affordable Housing Need (1999-2018)	Secondary Sources (1999-2018)	Adjusted Projected Need (1999-2018)
	Region	14,663	-2,969	11,694
2	Northwest Region	14,094	1,340	15,434
3	West Central Region	16,970	-1,194	15,776
4	East Central Region	36,812	-2,519	34,293
5	Southwest Region	18,782	-7,589	11,193
6	South-Southwest Region	25,953	-2,701	23,251
Total		131,297	-15,631	115,666

This figure, the "Adjusted Projected Need (1999-2018)," is the numerator in the growth share ratio and therefore determines how much affordable housing need will be distributed across residential development and job increases.

To check the robustness of this approach, we estimate affordable housing need using a second approach. This second approach is modeled on the Department of Housing and Urban Development's (HUD) technique for identifying households with housing problems. According to the HUD approach, "housing need" is comprised of low- and moderate-income households (those below 80 percent of median income) paying 30 percent or more of household income on owner costs or rent, and any household living in dilapidated housing or in overcrowded conditions. As in the Secondary Sources approach, we assume that these issues will affect the same portion of new New Jersey households as they do all New Jersey households in 2000 (according to the Comprehensive Housing Affordability Strategy (CHAS) Dataset (available at www.huduser.org/datasets/cp.html)). We also add to this total the additional demand stemming from individuals currently living in non-institutional group quarters. As expected (because the HUD approach incorporates both primary and secondary sources of supply), the need number reached using this approach is slightly lower than that using the Secondary Sources approach. However, both result in similar growth share ratios (described in further detail below). As a result, this helps validate the use of and conclusions reached using the Secondary Sources Approach.

HOUSING UNIT GROWTH (2004-2018)

In COAH's Third Round Rules, municipalities incur affordable housing obligations when local housing units and jobs increase. To quantify these increases, Econsult projects housing unit and employment growth from 2004 to 2018 for all municipalities and the State as a whole. Because housing prices and production vary over long periods of time, with rapid growth in some periods and slow growth in others, extending projections out to 2018 makes sense in order to reflect both strong and weak housing markets. Given New Jersey's very strong housing market in recent years, it is likely that that projections stopping in 2014 would disproportionately capture a relatively slow part of the housing cycle.

According to Econsult's projections (described in detail in Appendix F), New Jersey will add the following number of housing units between 2004 and 2018:

COAH Region		Housing Units 2004	Housing Units 2018	Net Housing Unit Change (2004-2018)
1	Northeast Region	822,830	865,397	42,567
2	Northwest Region	725,278	774,896	49,618
3	West Central Region	450,829	497,966	47,137
4	East Central Region	652,007	721,975	69,968
5	Southwest Region	472,416	522,750	50,334
6	South-Southwest Region	289,826	310,394	20,568
Total		3,413,186	3,693,378	280,192

These figures show new construction but cannot capture the number of units built to replace those removed from the housing stock through demolition. The net removal of existing homes - through intentional demolition as well as due to disasters such as storms or fires - represents a "crucial component of overall housing demand." <5> This component is the number of housing units required to replace units lost, over and above the new units required to accommodate

household growth.

Existing techniques for quantifying the number of net removals rely on Census estimates and direct measures of net removals, construction data, and housing counts from the decennial census. The Census estimates a roughly 0.3 percent net removal rate. Our net removal rate is based on actual demolition trends and the existing housing stock in New Jersey. On average, 4,829 units were demolished annually between 1996 and 2006 Statewide. This figure represents 0.15 percent of New Jersey's total housing units (3,310,275 in 2000, according to the Census). This net removal rate (0.15 percent) is similar to but below the national rate, a result not unanticipated given the higher-than-average property values in New Jersey.

To account for the replacement of depreciated units, this methodology adds a figure comparable to the total number of demolitions (projected for the period from 2004 to 2018 by multiplying the average annual number of properties demolished between 1996 and 2006 by 14) to the Net Housing Unit Change to arrive at an overall figure for projected housing unit growth. This calculation results in an estimate of 67,601 replacement units between 2004 and 2018.

COAH Region		Replacement Units (2004-2018)
1	Northeast Region	12,697
2	Northwest Region	17,431
3	West Central Region	4,413
4	East Central Region	11,355
5	Southwest Region	7,061
6	South-Southwest Region	14,644
Total		67,601

As in the previously adopted Third Round Substantive Rules, it is further assumed that the delivery of the Remaining Prior Round Obligation will reduce the housing supply able to support the current round's affordable housing requirement. An analysis by COAH staff determined that 22,980 units are necessary to deliver prior round obligations.

COAH Region		Units Required to Deliver Prior Round
1	Northeast Region	3,480
2	Northwest Region	4,740

COAH Region		Units Required to Deliver Prior Round
3	West Central Region	2,610
4	East Central Region	8,880
5	Southwest Region	3,000
6	South-Southwest Region	270
Total		22,980

Therefore, considering growth between 2004 and 2018, factoring in replacement units, and subtracting out the number of units required to deliver the prior round obligation, the total number of units available to deliver housing for the current round need is 324,813 units.

COAH Region		Housing Unit Change (2004-2018)	Replacement Units (2004-2018)	Units Required to Deliver Prior Round	Reduced Units to Deliver Current Round
1	Northeast Region	42,567	12,697	-3,480	51,784
2	Northwest Region	49,618	17,431	-4,740	62,309
3	West Central Region	47,137	4,413	-2,610	48,940
4	East Central Region	69,968	11,355	-8,880	72,443
5	Southwest Region	50,334	7,061	-3,000	54,395
6	South-				

COAH Region	Housing Unit Change (2004-2018)	Replacement Units (2004-2018)	Units Required to Deliver Prior Round	Reduced Units to Deliver Current Round
Southwest Region	20,568	14,644	-270	34,942
Total	280,192	67,601	-22,980	324,813

EMPLOYMENT GROWTH (2004-2018)

There is a strong link between jobs and housing. New jobs create a demand for housing by attracting new workers into a municipality, who will themselves require housing. (New jobs can also increase municipalities' tax bases.) Therefore, this non-residential development will generate a portion of the State's future affordable housing need.

According to Econsult's analysis (based on employment data from the New Jersey Department of Labor and Workforce Development, described in Appendix F), overall employment is expected to increase Statewide by 722,886 jobs between 2004 and 2018.

COAH Region		Employment 2004	Employment 2018	Net Total Employment Change (2004-2018)
1	Northeast Region	906,217	1,061,235	155,018
2	Northwest Region	903,057	1,066,602	163,545
3	West Central Region	607,514	700,025	92,511
4	East Central Region	574,244	726,717	152,473
5	Southwest Region	493,128	614,841	121,712
6	South-Southwest Region	268,996	306,622	37,626
Total		3,753,156	4,476,042	722,886

STATEWIDE GROWTH SHARE RATIOS

New residential and non-residential growth - and the municipalities that experience that growth - will be responsible for addressing the projected affordable housing need (115,666 units). The more municipalities grow, the greater their obligation, or "growth share." A municipality's "growth share" is a function of its actual growth. The Growth Share Ratios show the affordable obligation incurred by growth in housing units and jobs.

Because municipalities' affordable housing need stems from their increase in low- and moderate-income households as well as their increase in jobs (which attract additional employees, themselves in need of housing), there are two ratios: one for housing; and one for employment.

Affordable housing obligation is balanced between housing unit and employment growth, with a slightly greater emphasis on housing unit growth. Assigning 60 percent of projected affordable housing need to projected housing unit growth from 2004 to 2018, and 40 percent to projected net employment growth from 2004 to 2018, results in the following growth share ratios:

New Jersey

60 percent/40 percent Split	One Affordable Unit among Five Units Produced One Affordable Unit for 16 Jobs Created

MUNICIPAL-LEVEL OBLIGATIONS

To generate housing unit and employment growth at the municipal level, Econsult follows a five-step process. First, Econsult projects 2018 figures for each municipality based on its historical growth rate and build-out level. (These individual projections are aggregated at the county level and compared to county control figures. Whenever this sum exceeds county control totals, Econsult proportionally scales the individual projections down.) Second, Econsult verifies these projections against the physical growth capacity of each municipality and ensures that no town has exceeded its maximum growth level. Third, Econsult checks to see that future growth is not significantly faster than historical growth. Fourth, when municipalities exceed both these upper growth limits, the excess population "spills over" into neighboring communities until those communities reach their own upper growth limits. Lastly, these final municipal totals are again summed to the county level and compared to county controls.

These totals provide estimates of growth at the municipal level. It should be noted that these are projections and actual growth will differ. As noted by the New Jersey Department of Labor and Workforce Development, projections "are not intended to constrain or to advocate specific levels of growth in the state. . . These projections are best used as a reference framework for planning, research, and program evaluation."

While municipalities incur affordable housing obligations with actual growth, these totals establish the expected need for affordable units which municipalities are obligated to respond to through zoning and other methods. Municipal-level projections are used as a starting point to determine that municipalities are providing for their fair share of affordable need going forward, with a focus on that portion that can be accommodated through inclusionary zoning of vacant land. At a minimum, municipalities must zone or otherwise provide for their projected increase in housing units based on available vacant land.

Although they are derived from the best available data and methodology, replacement units cannot be reliably predicted

at the municipal or regional level going forward. However, at the statewide level, they provide an estimate for how much growth New Jersey can expect in the future. This actual growth, wherever it takes place, will be captured by the Growth Share Ratios described in this appendix.

In sum, municipalities incur obligations to provide affordable housing only when and to the extent growth occurs. Each municipality's current round affordable housing obligation is based on *actual* growth while maintaining zoning based on projections to establish a realistic opportunity for affordable housing.

<1> This current round obligation is in addition to municipalities' remaining obligations from prior rounds and rehabilitation obligation. These reflect communities' Rehabilitation Share and Prior Round Affordable Housing Need, described in detail in Appendices B and C.

<2> These units are removed because they are part of prior round plans to deliver affordable housing.

<3> Spontaneous rehabilitations were not included in this methodology. Research team members felt that while units were likely brought up to code ("spontaneously rehabilitated") over the course of the study period, others likely fell out of compliance, and it was not possible to verify the number of properties doing either one.

<4> According to the National Association of Realtors' mortgage calculator - and assuming households could put up to $ 10,000 toward their down-payment, had the State's average car payment ($ 447.00, reported by Edmunds Automotive Network) and credit card debt ($ 165.00, reported by PlasticEconomy.com), took out a loan at 6.375 percent (roughly the average commitment rate for 30-year, fixed rate loans in 2006 and 2007, according to Freddie Mac), and faced a 2.5 percent property tax rate (slightly below the average effective property tax rate for all New Jersey municipalities in 2004, reported by the New Jersey Division of Taxation) - a household earning $ 52,276 (the state median in 2000) could afford a $ 109,547 home. U.S. Census data from 2000 indicates that 19.5 percent of specified owner-occupied units were valued below $ 109,547.

<5> *America's Home Forecast: The Next Decade for Housing and Mortgage Finance* issued by the Homeownership Alliance, pg. 19.

APPENDIX B

COUNCIL ON AFFORDABLE HOUSING (COAH)

REHABILITATION SHARE METHODOLOGY

CONTENTS

TOTAL REHABILITATION SHARE

Prepared by

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INTRODUCTION

This methodology makes two changes to the Rehabilitation Share calculation presented in the previously released Third Round Substantive Rules: 1) it flagged overcrowded units built in 1949 or earlier (rather than 1939 or earlier); and 2) it excluded spontaneous rehabilitations. Researchers felt it was important to include all overcrowded properties that were at least 50 years old in 2000. (Fifty years is the National Park Service's cut-off for eligibility for listing in the National Register of Historic Places.) At the same time, researchers felt it was best to exclude spontaneous rehabilitations. <1>

This methodology borrows the remaining rehabilitation share numbers calculated by the Center for Urban Policy Research (CUPR), a component of Rutgers University's Edward J. Bloustein School of Planning and Public Policy, and reported in the previously released Third Round Substantive Rules.

CROWDING

Overcrowding is defined by the U.S. Department of Housing and Urban Development as any unit with more than one person living per room. These figures are reported by the U.S. Census. In 2000, the Census also specified occupancy levels by the year an individual unit was built (Table H.49). Therefore, using municipal-level data from the U.S. Census, it was possible to determine how many units built prior to 1950 - or at least 50-years-old in 2000 - were overcrowded.

COAH Region		Overcrowded, Built Pre-1950
1	Northeast Region	25,303
2	Northwest Region	15,337

COAH Region		Overcrowded, Built Pre-1950
3	West Central Region	4,416
4	East Central Region	4,179
5	Southwest Region	3,348
6	South-Southwest Region	2,367
Total		54,950

DILAPIDATED HOUSING

As determined previously by researchers from Rutgers' CUPR and as reported in the previously released Third Round Substantive Rules, the following numbers of properties in each region are dilapidated - lacking complete plumbing and/or kitchen facilities (as reported by the 2000 Census).

COAH Region		Lack Complete Plumbing	Lack Complete Kitchen
1	Northeast Region	5,785	6,229
2	Northwest Region	4,795	5,013
3	West Central Region	1,529	1,560
4	East Central Region	1,891	1,774
5	Southwest Region	1,643	1,724
6	South-Southwest Region	887	1,231
Total		16,530	17,531

LOW-MODERATE DETERIORATION SHARE

CUPR researchers further concluded in their previous work that the following portion of overcrowded and dilapidated housing would be occupied by low- or moderate-income households in each region:

COAH Region		Low-/Moderate-Income Deterioration Share
1	Northeast Region	0.639
2	Northwest Region	0.714
3	West Central Region	0.691
4	East Central Region	0.665
5	Southwest Region	0.737
6	South-Southwest Region	0.715

REHABILITATION SHARE CREDIT

Prior work also concluded that municipalities had received roughly 8,500 units in Rehabilitation Share Credits:

COAH Region		Rehabilitation Share Credit
1	Northeast Region	3,912
2	Northwest Region	2,474
3	West Central Region	370
4	East Central Region	536
5	Southwest Region	937
6	South-Southwest Region	237
Total		8,466

COAH Region	Rehabilitation Share Credit

TOTAL REHABILITATION SHARE

As in earlier work, a municipality's Total Rehabilitation Share is equal to the sum of its overcrowded and dilapidated units, multiplied by its regional Low-/Moderate-Income Deterioration Share, minus its Rehabilitation Share Credit. Statewide, this calculation results in a Total Rehabilitation Share of nearly 52,000 units:

COAH Region		Total Rehabilitation Share
1	Northeast Region	19,934
2	Northwest Region	15,480
3	West Central Region	4,816
4	East Central Region	4,680
5	Southwest Region	4,012
6	South-Southwest Region	2,970
Total		51,891

The municipal level figures are as follows:

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Absecon City	Atlantic	29	6	6
Atlantic City	Atlantic	700	182	215
Brigantine City	Atlantic	0	7	9
Buena Borough	Atlantic	30	7	12
Buena Vista	Atlantic	12	0	10

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Township				
Corbin City	Atlantic	0	2	0
Egg Harbor City	Atlantic	53	0	0
Egg Harbor Township	Atlantic	19	38	83
Estell Manor City	Atlantic	3	5	0
Folsom Borough	Atlantic	5	2	0
Galloway Township	Atlantic	5	35	25
Hamilton Township	Atlantic	20	15	44
Hammonton Township	Atlantic	105	8	4
Linwood City	Atlantic	5	0	101
Longport City	Atlantic	2	0	3
Margate City	Atlantic	4	0	0
Mullica City	Atlantic	27	10	0
Northfield City	Atlantic	13	0	6
Pleasantville City	Atlantic	87	35	10
Port Republic City	Atlantic	0	0	0
Somers Point City	Atlantic	28	0	8
Ventnor City	Atlantic	91	60	33
Weymouth Township	Atlantic	0	7	4
Allendale Borough	Bergen	6	0	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Alpine Borough	Bergen	0	0	3
Bergenfield Borough	Bergen	228	22	7
Bogota Borough	Bergen	95	7	7
Carlstadt Borough	Bergen	22	14	14
Cliffside Park Borough	Bergen	233	84	59
Closter Borough	Bergen	20	8	8
Cresskill Borough	Bergen	32	0	9
Demarest Borough	Bergen	7	0	0
Dumont Borough	Bergen	36	6	6
Elmwood Park Borough	Bergen	129	67	22
East Rutherford Borough	Bergen	145	11	6
Edgewater Borough	Bergen	17	39	12
Emerson Borough	Bergen	0	0	0
Englewood City	Bergen	364	40	35
Englewood Cliffs Borough	Bergen	9	0	0
Fair Lawn Borough	Bergen	59	16	9
Fairview Borough	Bergen	222	263	235
Fort Lee Borough	Bergen	198	53	54
Franklin Lakes Borough	Bergen	5	0	0
Garfield City	Bergen	355	85	65
Glen Rock Borough	Bergen	5	6	6
Hackensack City	Bergen	530	118	186
Harrington Park	Bergen	0	6	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Borough				
Hasbrouck Heights Borough	Bergen	51	17	8
Haworth Borough	Bergen	7	0	0
Hillsdale Borough	Bergen	7	5	11
Ho-Ho-Kus Borough	Bergen	0	0	0
Leonia Borough	Bergen	82	21	27
Little Ferry Borough	Bergen	74	31	29
Lodi Borough	Bergen	247	39	28
Lyndhurst Township	Bergen	49	11	23
Mahwah Township	Bergen	23	15	32
Maywood Borough	Bergen	21	7	21
Midland Park Borough	Bergen	18	0	7
Montvale Borough	Bergen	8	9	0
Moonachie Borough	Bergen	12	0	0
New Milford Borough	Bergen	48	32	52
North Arlington Borough	Bergen	34	16	41
Northvale Borough	Bergen	13	5	5
Norwood Borough	Bergen	0	21	14
Oakland Borough	Bergen	14	11	0
Old Tappan Borough	Bergen	0	10	15
Oradell Borough	Bergen	0	0	10
Palisades Park	Bergen	292	37	20

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Borough				
Paramus Borough	Bergen	58	12	7
Park Ridge Borough	Bergen	47	5	0
Ramsey Borough	Bergen	13	11	0
Ridgefield Borough	Bergen	78	16	23
Ridgefield Park Village	Bergen	157	31	25
Ridgewood Village	Bergen	76	20	24
River Edge Borough	Bergen	35	12	7
River Vale Township	Bergen	0	0	0
Rochelle Park Township	Bergen	11	0	54
Rockleigh Borough	Bergen	4	0	0
Rutherford Borough	Bergen	94	6	51
Saddle Brook Township	Bergen	56	0	8
Saddle River Borough	Bergen	0	0	33
South Hackensack Township	Bergen	24	4	5
Teaneck Township	Bergen	228	129	84
Tenafly Borough	Bergen	71	0	27

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Teterboro Borough	Bergen	0	0	0
Upper Saddle River Borough	Bergen	0	0	0
Waldwick Borough	Bergen	13	13	15
Wallington Borough	Bergen	109	13	14
Washington Township	Bergen	0	0	0
Westwood Borough	Bergen	26	21	22
Woodcliff Lake Borough	Bergen	0	0	0
Wood-Ridge Borough	Bergen	13	37	45
Wyckoff Township	Bergen	0	21	43
Bass River Township	Burlington	4	9	7
Beverly City	Burlington	19	4	0
Bordentown City	Burlington	7	0	0
Bordentown Township	Burlington	14	15	0
Burlington City	Burlington	59	23	7
Burlington Township	Burlington	34	16	46
Chesterfield Township	Burlington	0	0	0
Cinnaminson Township	Burlington	7	0	0
Delanco Township	Burlington	3	6	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Delran Township	Burlington	14	14	6
Eastampton Township	Burlington	0	17	6
Edgewater Park Township	Burlington	16	0	0
Evesham Township	Burlington	0	7	0
Fieldsboro Borough	Burlington	2	0	3
Florence Township	Burlington	30	13	6
Hainesport Township	Burlington	7	0	6
Lumberton Township	Burlington	27	24	15
Mansfield Township	Burlington	7	0	0
Maple Shade Borough	Burlington	23	32	6
Medford Township	Burlington	10	0	10
Medford Lakes Borough	Burlington	0	0	0
Moorestown Township	Burlington	12	6	6
Mount Holly Township	Burlington	43	7	51
Mount Laurel Township	Burlington	0	25	19
New Hanover	Burlington	12	0	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Township				
North Hanover Township	Burlington	9	13	0
Palmyra Borough	Burlington	19	0	8
Pemberton Borough	Burlington	14	0	5
Pemberton Township	Burlington	65	21	29
Riverside Township	Burlington	39	11	7
Riverton Borough	Burlington	17	0	6
Shamong Township	Burlington	0	10	0
Southampton Township	Burlington	0	7	0
Springfield Township	Burlington	0	4	0
Tabernacle Township	Burlington	0	7	7
Washington Township	Burlington	0	0	0
Westampton Township	Burlington	9	9	0
Willingboro Township	Burlington	23	12	37
Woodland Township	Burlington	0	6	2
Wrightstown Borough	Burlington	2	3	0
Audubon Borough	Camden	16	6	0
Audubon Park	Camden	7	0	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Borough				
Barrington Borough	Camden	0	0	5
Bellmawr Borough	Camden	46	12	5
Berlin Borough	Camden	26	6	0
Berlin Township	Camden	0	6	0
Brooklawn Borough	Camden	12	0	0
Camden City	Camden	1629	586	451
Cherry Hill Township	Camden	31	42	259
Chesilhurst Borough	Camden	0	0	3
Clementon Borough	Camden	34	7	7
Collingswood Borough	Camden	45	10	87
Gibbsboro Borough	Camden	16	8	3
Gloucester City	Camden	64	8	20
Gloucester Township	Camden	24	64	67
Haddon Township	Camden	29	13	15
Haddonfield Borough	Camden	5	24	11
Haddon Heights Borough	Camden	18	14	0
Hi-nella Borough	Camden	5	0	0
Laurel Springs Borough	Camden	6	0	2
Lawnside Borough	Camden	13	5	6
Lindenwold	Camden	55	28	17

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Borough				
Magnolia Borough	Camden	0	7	8
Merchantville Borough	Camden	21	0	0
Mount Ephrain Borough	Camden	6	0	6
Oaklyn Borough	Camden	13	6	0
Pennsauken Township	Camden	195	40	40
Pine Hill Borough	Camden	22	19	10
Pine Valley Borough	Camden	0	0	0
Runnemede Borough	Camden	13	7	10
Somerdale Borough	Camden	6	10	6
Stratford Borough	Camden	9	19	7
Tavistock Borough	Camden	0	0	0
Voorhees Township	Camden	7	35	155
Waterford Township	Camden	10	29	19
Winslow Township	Camden	0	67	58
Woodlynne Borough	Camden	42	0	0
Avalon Borough	Cape May	0	0	0
Cape May City	Cape May	4	7	0
Cape May Point Borough	Cape May	0	0	0
Dennis Township	Cape May	6	18	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Lower Township	Cape May	31	15	55
Middle Township	Cape May	7	5	34
North Wildwood City	Cape May	8	15	0
Ocean City	Cape May	18	18	157
Sea Isle City	Cape May	0	0	7
Stone Harbor Borough	Cape May	0	0	0
Upper Township	Cape May	11	9	0
West Cape May Borough	Cape May	3	7	6
West Wildwood Borough	Cape May	0	0	0
Wildwood City	Cape May	65	26	66
Wildwood Crest Borough	Cape May	3	0	0
Woodbine Borough	Cape May	9	6	10
Bridgeton City	Cumberland	295	35	56
Commercial Township	Cumberland	5	0	0
Deerfield Township	Cumberland	17	8	5
Downe Township	Cumberland	4	9	5
Fairfield Township	Cumberland	0	0	5
Greenwich Township	Cumberland	0	0	0
Hopewell Township	Cumberland	0	0	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Lawrence Township	Cumberland	4	5	0
Maurice River Township	Cumberland	8	0	0
Millville City	Cumberland	81	38	62
Shiloh Borough	Cumberland	0	0	0
Stow Creek Township	Cumberland	6	2	0
Upper Deerfield Township	Cumberland	9	6	16
Vineland City	Cumberland	385	132	79
Belleville Township	Essex	353	64	71
Bloomfield Township	Essex	369	65	68
Caldwell Township	Essex	24	10	40
Cedar Grove Township	Essex	11	11	11
East Orange City	Essex	1135	361	321
Essex Fells Township	Essex	0	5	2
Fairfield Township	Essex	0	0	0
Glen Ridge Borough	Essex	0	16	24
Irvington Township	Essex	912	310	350
Livingston	Essex	38	13	7

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Township				
Maplewood Township	Essex	110	10	55
Millburn Township	Essex	16	27	13
Montclair Township	Essex	319	50	169
Newark City	Essex	4638	1280	1232
North Caldwell Borough	Essex	0	0	0
Nutley Township	Essex	41	33	19
City of Orange Township	Essex	439	283	210
Roseland Borough	Essex	0	8	0
South Orange Village	Essex	40	14	22
Verona Township	Essex	32	25	37
West Caldwell Township	Essex	6	0	0
West Orange Township	Essex	266	66	122
Clayton Borough	Gloucester	49	20	0
Deptford Township	Gloucester	20	6	4
East Greenwich Township	Gloucester	8	6	0
Elk Township	Gloucester	10	0	0
Franklin Township	Gloucester	29	17	14
Glassboro Borough	Gloucester	25	19	26

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Greenwich Township	Gloucester	9	11	0
Harrison Township	Gloucester	6	8	0
Logan Township	Gloucester	0	0	0
Mantua Township	Gloucester	7	0	10
Monroe Township	Gloucester	23	30	13
National Park Borough	Gloucester	8	0	0
Newfield Borough	Gloucester	0	2	2
Paulsboro Borough	Gloucester	19	15	15
Pitman Borough	Gloucester	25	6	0
South Harrison Township	Gloucester	4	5	0
Swedesborough Borough	Gloucester	4	4	4
Washington Township	Gloucester	8	12	40
Wenonah Borough	Gloucester	0	0	0
West Deptford Township	Gloucester	19	42	0
Westville Borough	Gloucester	40	10	6
Woodbury City	Gloucester	56	26	11
Woodbury Heights Borough	Gloucester	7	0	7
Woolwich Township	Gloucester	0	5	0
Bayonne City	Hudson	544	170	105
East Newark	Hudson	43	8	7

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Borough				
Guttenberg Town	Hudson	93	29	11
Harrison Town	Hudson	211	75	111
Hoboken City	Hudson	328	158	169
Jersey City	Hudson	5453	975	1027
Kearny Town	Hudson	455	85	152
North Bergen Township	Hudson	852	361	292
Secaucus Town	Hudson	54	41	10
Union City	Hudson	2726	460	688
Weehawken Township	Hudson	268	50	48
West New York Town	Hudson	1705	346	339
Alexandria Township	Hunterdon	0	15	0
Bethlehem Township	Hunterdon	0	7	0
Bloomsbury Borough	Hunterdon	0	0	0
Califon Borough	Hunterdon	0	2	2
Clinton Town	Hunterdon	0	0	0
Clinton Township	Hunterdon	0	16	7
Delaware Township	Hunterdon	11	0	0
East Amwell Township	Hunterdon	13	0	0
Flemington	Hunterdon	18	7	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Borough				
Franklin Township	Hunterdon	3	13	12
Frenchtown Borough	Hunterdon	2	4	4
Glen Gardner Borough	Hunterdon	6	0	2
Hampton Borough	Hunterdon	3	0	0
High Bridge Borough	Hunterdon	0	0	0
Holland Township	Hunterdon	0	25	11
Kingwood Township	Hunterdon	7	0	9
Lambertville City	Hunterdon	20	27	14
Lebanon Borough	Hunterdon	4	0	0
Lebanon Township	Hunterdon	0	10	19
Milford Borough	Hunterdon	8	0	0
Raritan Township	Hunterdon	0	23	0
Readington Township	Hunterdon	0	0	0
Stockton Borough	Hunterdon	2	2	2
Tewksbury Township	Hunterdon	0	0	0
Union Township	Hunterdon	0	0	6
West Amwell Township	Hunterdon	2	4	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
East Windsor Township	Mercer	72	21	0
Ewing Township	Mercer	47	53	10
Hamilton Township	Mercer	216	144	57
Hightstown Borough	Mercer	44	19	0
Hopewell Borough	Mercer	0	0	0
Hopewell Township	Mercer	0	0	7
Lawrence Township	Mercer	8	44	18
Pennington Borough	Mercer	0	0	0
Princeton Borough	Mercer	69	20	47
Princeton Township	Mercer	45	16	9
Trenton City	Mercer	1371	239	260
Washington Township	Mercer	0	17	9
West Windsor Township	Mercer	12	16	6
Carteret Borough	Middlesex	207	50	50
Cranbury Township	Middlesex	0	9	0
Dunellen Borough	Middlesex	25	0	32
East Brunswick Township	Middlesex	18	30	18
Edison Township	Middlesex	154	55	41
Helmetta Borough	Middlesex	2	0	2

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Highland Park Borough	Middlesex	94	14	0
Jamesburg Borough	Middlesex	24	0	0
Old Bridge Township	Middlesex	72	72	62
Metuchen Borough	Middlesex	18	26	17
Middlesex Borough	Middlesex	22	13	0
Milltown Borough	Middlesex	14	0	0
Monroe Township	Middlesex	6	24	116
New Brunswick City	Middlesex	897	137	185
North Brunswick Township	Middlesex	63	15	14
Perth Amboy City	Middlesex	1132	191	212
Piscataway Township	Middlesex	79	78	51
Plainsboro Township	Middlesex	0	14	50
Sayreville Borough	Middlesex	30	74	40
South Amboy City	Middlesex	6	15	19
South Brunswick Township	Middlesex	0	47	5
South Plainfield Borough	Middlesex	90	35	21
South River Borough	Middlesex	77	22	33
Spotswood Borough	Middlesex	20	7	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Woodbridge Township	Middlesex	261	95	78
Allenhurst Borough	Monmouth	0	0	2
Allentown Borough	Monmouth	9	0	2
Asbury Park City	Monmouth	345	109	133
Atlantic Highlands Borough	Monmouth	9	0	0
Avon-by-the-Sea Borough	Monmouth	0	12	8
Belmar Borough	Monmouth	50	17	15
Bradley Beach Borough	Monmouth	36	0	10
Brielle Borough	Monmouth	0	0	0
Colts Neck Township	Monmouth	0	0	0
Deal Borough	Monmouth	0	0	2
Eatontown Borough	Monmouth	11	31	6
Englishtown Borough	Monmouth	6	2	62
Fair Haven Borough	Monmouth	0	0	7
Farmingdale Borough	Monmouth	7	0	0
Freehold Borough	Monmouth	137	43	51
Freehold Township	Monmouth	9	14	20
Highlands Borough	Monmouth	23	8	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Holmdel Township	Monmouth	0	9	22
Howell Township	Monmouth	58	22	34
Interlaken Borough	Monmouth	0	0	0
Keansburg Borough	Monmouth	54	34	23
Keyport Borough	Monmouth	19	11	5
Little Silver Borough	Monmouth	0	0	0
Loch Arbour Village	Monmouth	0	0	0
Long Branch City	Monmouth	308	95	81
Manalapan Township	Monmouth	5	39	10
Manasquan Borough	Monmouth	29	9	9
Marlboro Township	Monmouth	0	31	23
Matawan Borough	Monmouth	15	6	0
Aberdeen Township	Monmouth	14	13	20
Middletown Township	Monmouth	108	40	83
Millstone Township	Monmouth	0	22	0
Monmouth Beach Borough	Monmouth	0	7	0
Neptune Township	Monmouth	111	82	67
Neptune City	Monmouth	6	8	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Borough				
Tinton Falls Borough	Monmouth	6	41	17
Ocean Township	Monmouth	49	20	9
Oceanport Borough	Monmouth	0	0	0
Hazlet Township	Monmouth	32	0	8
Red Bank Borough	Monmouth	105	0	24
Roosevelt Borough	Monmouth	4	0	0
Rumson Borough	Monmouth	0	0	0
Sea Bright Borough	Monmouth	19	17	0
Sea Girt Borough	Monmouth	4	0	0
Shrewsbury Borough	Monmouth	0	0	0
Shrewsbury Township	Monmouth	0	2	0
South Belmar Borough	Monmouth	13	11	8
Spring Lake Borough	Monmouth	6	14	75
Spring Lake Heights Borough	Monmouth	7	0	0
Union Beach Borough	Monmouth	19	0	18
Upper Freehold Township	Monmouth	0	6	8
Wall Township	Monmouth	35	25	8
West Long Branch Borough	Monmouth	0	0	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Boonton Town	Morris	70	0	10
Boonton Township	Morris	0	0	0
Butler Borough	Morris	27	8	16
Chatham Borough	Morris	0	18	12
Chatham Township	Morris	6	13	7
Chester Borough	Morris	12	0	3
Chester Township	Morris	6	0	0
Denville Township	Morris	16	8	19
Dover Town	Morris	322	69	53
East Hanover Township	Morris	0	0	0
Florham Park Borough	Morris	0	50	44
Hanover Township	Morris	24	0	0
Harding Township	Morris	0	0	0
Jefferson Township	Morris	0	17	0
Kinnelon Borough	Morris	7	12	0
Lincoln Park Borough	Morris	44	0	0
Madison Borough	Morris	40	55	26
Mendham Borough	Morris	0	7	0
Mendham Township	Morris	0	0	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Mine Hill Township	Morris	16	21	6
Montville Township	Morris	0	9	10
Morris Township	Morris	35	11	6
Morris Plains Borough	Morris	5	0	0
Morristown Town	Morris	292	61	23
Mountain Lakes Borough	Morris	0	0	0
Mount Arlington Borough	Morris	19	0	0
Mount Olive Township	Morris	19	58	17
Netcong Borough	Morris	8	0	6
Parsippany-Troy Hills Twp	Morris	285	83	78
Long Hill Township	Morris	0	0	0
Pequannock Township	Morris	0	0	0
Randolph Township	Morris	19	19	9
Riverdale Borough	Morris	4	0	0
Rockaway Borough	Morris	17	0	0
Rockaway Township	Morris	14	21	24
Roxbury Township	Morris	21	13	15
Victory Gardens	Morris	15	9	7

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Borough				
Washington Township	Morris	0	0	8
Wharton Borough	Morris	25	7	8
Barnegat Light Borough	Ocean	0	3	3
Bay Head Borough	Ocean	5	0	3
Beach Haven Borough	Ocean	0	0	0
Beachwood Borough	Ocean	28	0	0
Berkeley Township	Ocean	18	43	33
Brick Township	Ocean	39	49	51
Dover Township	Ocean	39	69	30
Eagleswood Township	Ocean	3	0	0
Harvey Cedars Borough	Ocean	0	0	0
Island Heights Borough	Ocean	0	0	0
Jackson Township	Ocean	16	44	9
Lacey Township	Ocean	10	17	10
Lakehurst Borough	Ocean	3	0	0
Lakewood Township	Ocean	334	200	238
Lavallette Borough	Ocean	0	0	0
Little Egg Harbor Township	Ocean	0	0	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Long Beach Township	Ocean	0	0	0
Manchester Township	Ocean	6	17	34
Mantoloking Borough	Ocean	0	0	3
Ocean Township	Ocean	0	8	8
Ocean Gate Borough	Ocean	8	0	0
Pine Beach Borough	Ocean	0	0	0
Plumsted Township	Ocean	13	0	0
Point Pleasant Borough	Ocean	12	10	0
Point Pleasant Beach Boro	Ocean	38	17	33
Seaside Heights Borough	Ocean	19	5	5
Seaside Park Borough	Ocean	8	6	0
Ship Bottom Borough	Ocean	4	4	2
South Toms River Borough	Ocean	4	0	0
Stafford Township	Ocean	11	8	17
Surf City Borough	Ocean	2	2	2
Tuckerton Borough	Ocean	7	0	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Barnegat Township	Ocean	0	0	0
Bloomingdale Borough	Passaic	25	0	0
Clifton City	Passaic	762	180	169
Haledon Borough	Passaic	94	17	15
Hawthorne Borough	Passaic	28	15	10
Little Falls Township	Passaic	15	9	0
North Haledon Borough	Passaic	0	0	0
Passaic City	Passaic	2725	342	416
Paterson City	Passaic	3610	717	809
Pompton Lakes Borough	Passaic	14	20	22
Prospect Park Borough	Passaic	94	0	0
Ringwood Borough	Passaic	40	0	7
Totowa Borough	Passaic	24	15	15
Wanaque Borough	Passaic	0	32	22
Wayne Township	Passaic	52	48	31
West Milford Township	Passaic	48	28	27
West Paterson Borough	Passaic	11	13	5
Alloway Township	Salem	3	4	4
Elmer Borough	Salem	4	3	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Elsinboro Township	Salem	0	0	0
Lower Alloways Creek Twp	Salem	3	5	8
Mannington Township	Salem	4	6	0
Oldmans Township	Salem	3	4	0
Penns Grove Borough	Salem	50	21	22
Pennsville Township	Salem	7	6	13
Pilesgrove Township	Salem	6	0	0
Pittsgrove Township	Salem	8	16	0
Quinton Township	Salem	0	8	4
Salem City	Salem	43	21	14
Carneys Point Township	Salem	4	13	13
Upper Pittsgrove Township	Salem	3	0	3
Woodstown Borough	Salem	12	0	14
Bedminster Township	Somerset	0	0	0
Bernards Township	Somerset	11	6	0
Bernardsville	Somerset	22	0	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Borough				
Bound Brook Borough	Somerset	219	28	32
Branchburg Township	Somerset	0	16	31
Bridgewater Township	Somerset	13	71	56
Far Hills Borough	Somerset	3	0	0
Franklin Township	Somerset	124	67	85
Green Brook Township	Somerset	0	0	0
Hillsborough Township	Somerset	0	14	13
Manville Borough	Somerset	32	44	61
Millstone Borough	Somerset	3	0	0
Montgomery Township	Somerset	0	8	8
North Plainfield Borough	Somerset	353	47	71
Peapack-Gladstone Borough	Somerset	4	3	2
Raritan Borough	Somerset	35	8	21
Rocky Hill Borough	Somerset	0	3	3
Somerville Borough	Somerset	98	8	0
South Bound Brook Borough	Somerset	71	20	32
Warren Township	Somerset	8	0	11

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Watchung Borough	Somerset	10	8	0
Andover Borough	Sussex	0	0	0
Andover Township	Sussex	0	0	0
Branchville Borough	Sussex	0	0	0
Byram Township	Sussex	12	13	13
Frankford Township	Sussex	9	0	0
Franklin Borough	Sussex	33	0	0
Fredon Township	Sussex	0	0	0
Green Township	Sussex	4	4	0
Hamburg Borough	Sussex	11	0	0
Hampton Township	Sussex	0	0	0
Hardyston Township	Sussex	0	7	7
Hopatcong Borough	Sussex	9	16	27
Lafayette Township	Sussex	4	0	0
Montague Township	Sussex	8	4	11
Newton Town	Sussex	30	13	25
Ogdensburg Borough	Sussex	11	0	0
Sandyston Township	Sussex	2	2	5
Sparta Township	Sussex	4	14	6
Stanhope Borough	Sussex	0	6	0

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Stillwater Township	Sussex	13	6	9
Sussex Borough	Sussex	21	23	26
Vernon Township	Sussex	28	0	20
Walpack Township	Sussex	0	0	0
Wantage Township	Sussex	0	0	0
Berkeley Heights Township	Union	23	12	0
Clark Township	Union	0	8	8
Cranford Township	Union	32	31	14
Elizabeth City	Union	2609	864	949
Fanwood Borough	Union	0	10	37
Garwood Borough	Union	14	0	0
Hillside Township	Union	198	18	35
Kenilworth Borough	Union	28	9	0
Linden City	Union	233	49	78
Mountainside Borough	Union	0	8	53
New Providence Borough	Union	19	7	0
Plainfield City	Union	1070	161	116
Rahway City	Union	161	132	125
Roselle Borough	Union	193	33	61
Roselle Park	Union	109	34	41

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Borough				
Scotch Plains Township	Union	15	7	15
Springfield Township	Union	0	19	8
Summit City	Union	95	0	12
Union Township	Union	188	47	50
Westfield Town	Union	19	16	23
Winfield Township	Union	22	0	3
Allamuchy Township	Warren	0	0	6
Alpha Borough	Warren	0	0	3
Belvidere Town	Warren	10	0	0
Blairstown Township	Warren	10	6	6
Franklin Township	Warren	8	0	4
Frelinghuysen Township	Warren	0	4	4
Greenwich Township	Warren	4	12	12
Hackettstown Town	Warren	52	10	44
Hardwick Township	Warren	0	2	2
Harmony Township	Warren	0	4	0
Hope Township	Warren	2	6	4
Independence	Warren	7	12	7

Municipality	County	Crowded, Built Pre-1950	Incomplete Plumbing	Incomplete Kitchen
Township				
Knowlton Township	Warren	16	3	0
Liberty Township	Warren	3	4	9
Lopatcong Township	Warren	7	9	0
Mansfield Township	Warren	0	0	0
Oxford Township	Warren	5	4	0
Phillipsburg Town	Warren	44	34	55
Pohatcong Township	Warren	0	0	0
Washington Borough	Warren	24	0	49
Washington Township	Warren	0	0	0
White Township	Warren	0	0	0

<1> While units were likely brought up to code ("spontaneously rehabilitated") over the course of the study period, others likely fell out of compliance, and it was not possible to verify the number of properties doing either one. In addition, spontaneous rehabilitations were likely captured in the updated filtering numbers.

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Absecon City	Atlantic	0.715	0	29

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Atlantic City	Atlantic	0.715	-193	591
Brigantine City	Atlantic	0.715	0	11
Buena Borough	Atlantic	0.715	0	35
Buena Vista Township	Atlantic	0.715	0	16
Corbin City	Atlantic	0.715	0	1
Egg Harbor City	Atlantic	0.715	0	38
Egg Harbor Township	Atlantic	0.715	0	100
Estell Manor City	Atlantic	0.715	0	6
Folsom Borough	Atlantic	0.715	0	5
Galloway Township	Atlantic	0.715	0	46
Hamilton Township	Atlantic	0.715	0	56
Hammonton Township	Atlantic	0.715	0	84
Linwood City	Atlantic	0.715	-10	66
Longport City	Atlantic	0.715	0	4
Margate City	Atlantic	0.715	0	3
Mullica City	Atlantic	0.715	0	26
Northfield City	Atlantic	0.715	0	14
Pleasantville City	Atlantic	0.715	0	94
Port Republic City	Atlantic	0.715	0	0
Somers Point	Atlantic	0.715	0	26

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
City				
Ventnor City	Atlantic	0.715	0	132
Weymouth Township	Atlantic	0.715	0	8
Allendale Borough	Bergen	0.639	0	4
Alpine Borough	Bergen	0.639	0	2
Bergenfield Borough	Bergen	0.639	-45	119
Bogota Borough	Bergen	0.639	-1	69
Carlstadt Borough	Bergen	0.639	0	32
Cliffside Park Borough	Bergen	0.639	-104	136
Closter Borough	Bergen	0.639	-9	14
Cresskill Borough	Bergen	0.639	0	26
Demarest Borough	Bergen	0.639	0	4
Dumont Borough	Bergen	0.639	0	31
Elmwood Park Borough	Bergen	0.639	-72	67
East Rutherford Borough	Bergen	0.639	-19	85
Edgewater Borough	Bergen	0.639	-19	24
Emerson Borough	Bergen	0.639	0	0
Englewood City	Bergen	0.639	-87	194
Englewood Cliffs Borough	Bergen	0.639	-4	2
Fair Lawn Borough	Bergen	0.639	-1	53
Fairview Borough	Bergen	0.639	-296	164

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Fort Lee Borough	Bergen	0.639	-35	160
Franklin Lakes Borough	Bergen	0.639	0	3
Garfield City	Bergen	0.639	-148	175
Glen Rock Borough	Bergen	0.639	0	11
Hackensack City	Bergen	0.639	-232	301
Harrington Park Borough	Bergen	0.639	0	4
Hasbrouck Heights Borough	Bergen	0.639	0	49
Haworth Borough	Bergen	0.639	0	4
Hillsdale Borough	Bergen	0.639	0	15
Ho-Ho-Kus Borough	Bergen	0.639	0	0
Leonia Borough	Bergen	0.639	-11	72
Little Ferry Borough	Bergen	0.639	-44	42
Lodi Borough	Bergen	0.639	-78	123
Lyndhurst Township	Bergen	0.639	0	53
Mahwah Township	Bergen	0.639	-1	44
Maywood Borough	Bergen	0.639	-2	29
Midland Park Borough	Bergen	0.639	0	16
Montvale Borough	Bergen	0.639	-6	5
Moonachie Borough	Bergen	0.639	-1	7
New Milford Borough	Bergen	0.639	-39	45

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
North Arlington Borough	Bergen	0.639	0	58
Northvale Borough	Bergen	0.639	0	15
Norwood Borough	Bergen	0.639	-12	10
Oakland Borough	Bergen	0.639	0	16
Old Tappan Borough	Bergen	0.639	-9	7
Oradell Borough	Bergen	0.639	0	6
Palisades Park Borough	Bergen	0.639	-97	126
Paramus Borough	Bergen	0.639	-5	44
Park Ridge Borough	Bergen	0.639	-14	19
Ramsey Borough	Bergen	0.639	0	15
Ridgefield Borough	Bergen	0.639	-24	51
Ridgefield Park Village	Bergen	0.639	-35	101
Ridgewood Village	Bergen	0.639	0	77
River Edge Borough	Bergen	0.639	-4	31
River Vale Township	Bergen	0.639	0	0
Rochelle Park Township	Bergen	0.639	-10	32
Rockleigh Borough	Bergen	0.639	-2	1
Rutherford	Bergen	0.639	0	96

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Borough				
Saddle Brook Township	Bergen	0.639	-3	38
Saddle River Borough	Bergen	0.639	-6	15
South Hackensack Township	Bergen	0.639	-11	10
Teaneck Township	Bergen	0.639	-48	234
Tenafly Borough	Bergen	0.639	-1	62
Teterboro Borough	Bergen	0.639	0	0
Upper Saddle River Borough	Bergen	0.639	0	0
Waldwick Borough	Bergen	0.639	0	26
Wallington Borough	Bergen	0.639	-16	71
Washington Township	Bergen	0.639	0	0
Westwood Borough	Bergen	0.639	-3	41
Woodcliff Lake Borough	Bergen	0.639	0	0
Wood-Ridge Borough	Bergen	0.639	0	61
Wyckoff Township	Bergen	0.639	-5	36
Bass River Township	Burlington	0.737	-2	13
Beverly City	Burlington	0.737	-1	16

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Bordentown City	Burlington	0.737	0	5
Bordentown Township	Burlington	0.737	0	21
Burlington City	Burlington	0.737	0	66
Burlington Township	Burlington	0.737	-15	56
Chesterfield Township	Burlington	0.737	0	0
Cinnaminson Township	Burlington	0.737	0	5
Delanco Township	Burlington	0.737	0	7
Delran Township	Burlington	0.737	0	25
Eastampton Township	Burlington	0.737	0	17
Edgewater Park Township	Burlington	0.737	0	12
Evesham Township	Burlington	0.737	0	5
Fieldsboro Borough	Burlington	0.737	0	4
Florence Township	Burlington	0.737	0	36
Hainesport Township	Burlington	0.737	0	10
Lumberton Township	Burlington	0.737	0	49
Mansfield Township	Burlington	0.737	0	5

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Maple Shade Borough	Burlington	0.737	0	45
Medford Township	Burlington	0.737	0	15
Medford Lakes Borough	Burlington	0.737	0	0
Moorestown Township	Burlington	0.737	0	18
Mount Holly Township	Burlington	0.737	0	74
Mount Laurel Township	Burlington	0.737	0	32
New Hanover Township	Burlington	0.737	0	9
North Hanover Township	Burlington	0.737	0	16
Palmyra Borough	Burlington	0.737	0	20
Pemberton Borough	Burlington	0.737	-4	10
Pemberton Township	Burlington	0.737	0	85
Riverside Township	Burlington	0.737	0	42
Riverton Borough	Burlington	0.737	0	17
Shamong Township	Burlington	0.737	0	7
Southampton Township	Burlington	0.737	0	5
Springfield Township	Burlington	0.737	0	3

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Tabernacle Township	Burlington	0.737	0	10
Washington Township	Burlington	0.737	0	0
Westampton Township	Burlington	0.737	0	13
Willingboro Township	Burlington	0.737	0	53
Woodland Township	Burlington	0.737	0	6
Wrightstown Borough	Burlington	0.737	0	4
Audubon Borough	Camden	0.737	0	16
Audubon Park Borough	Camden	0.737	0	5
Barrington Borough	Camden	0.737	0	4
Bellmawr Borough	Camden	0.737	-1	45
Berlin Borough	Camden	0.737	0	24
Berlin Township	Camden	0.737	0	4
Brooklawn Borough	Camden	0.737	0	9
Camden City	Camden	0.737	-736	1229
Cherry Hill Township	Camden	0.737	-100	145
Chesilhurst Borough	Camden	0.737	0	2
Clementon Borough	Camden	0.737	0	35
Collingswood	Camden	0.737	0	105

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Borough				
Gibbsboro Borough	Camden	0.737	-2	18
Gloucester City	Camden	0.737	0	68
Gloucester Township	Camden	0.737	0	114
Haddon Township	Camden	0.737	0	42
Haddonfield Borough	Camden	0.737	0	29
Haddon Heights Borough	Camden	0.737	0	24
Hi-nella Borough	Camden	0.737	0	4
Laurel Springs Borough	Camden	0.737	0	6
Lawnside Borough	Camden	0.737	0	18
Lindenwold Borough	Camden	0.737	0	74
Magnolia Borough	Camden	0.737	0	11
Merchantville Borough	Camden	0.737	0	15
Mount Ephrain Borough	Camden	0.737	0	9
Oaklyn Borough	Camden	0.737	0	14
Pennsauken Township	Camden	0.737	0	203
Pine Hill Borough	Camden	0.737	0	38
Pine Valley Borough	Camden	0.737	0	0
Runnemede Borough	Camden	0.737	0	22

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Somerdale Borough	Camden	0.737	0	16
Stratford Borough	Camden	0.737	0	26
Tavistock Borough	Camden	0.737	0	0
Voorhees Township	Camden	0.737	-59	86
Waterford Township	Camden	0.737	0	43
Winslow Township	Camden	0.737	0	92
Woodlynne Borough	Camden	0.737	-7	24
Avalon Borough	Cape May	0.715	0	0
Cape May City	Cape May	0.715	0	8
Cape May Point Borough	Cape May	0.715	0	0
Dennis Township	Cape May	0.715	0	17
Lower Township	Cape May	0.715	0	72
Middle Township	Cape May	0.715	0	33
North Wildwood City	Cape May	0.715	0	16
Ocean City	Cape May	0.715	0	138
Sea Isle City	Cape May	0.715	0	5
Stone Harbor Borough	Cape May	0.715	0	0
Upper Township	Cape May	0.715	0	14
West Cape May Borough	Cape May	0.715	0	11

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
West Wildwood Borough	Cape May	0.715	0	0
Wildwood City	Cape May	0.715	-30	82
Wildwood Crest Borough	Cape May	0.715	0	2
Woodbine Borough	Cape May	0.715	0	18
Bridgeton City	Cumberland	0.715	0	276
Commercial Township	Cumberland	0.715	0	4
Deerfield Township	Cumberland	0.715	0	21
Downe Township	Cumberland	0.715	0	13
Fairfield Township	Cumberland	0.715	0	4
Greenwich Township	Cumberland	0.715	0	0
Hopewell Township	Cumberland	0.715	0	0
Lawrence Township	Cumberland	0.715	0	6
Maurice River Township	Cumberland	0.715	0	6
Millville City	Cumberland	0.715	0	129
Shiloh Borough	Cumberland	0.715	0	0
Stow Creek Township	Cumberland	0.715	0	6
Upper Deerfield Township	Cumberland	0.715	0	22

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Vineland City	Cumberland	0.715	0	426
Belleville Township	Essex	0.714	-99	249
Bloomfield Township	Essex	0.714	-38	320
Caldwell Township	Essex	0.714	-28	25
Cedar Grove Township	Essex	0.714	-17	7
East Orange City	Essex	0.714	-163	1134
Essex Fells Township	Essex	0.714	-3	2
Fairfield Township	Essex	0.714	0	0
Glen Ridge Borough	Essex	0.714	0	29
Irvington Township	Essex	0.714	-107	1015
Livingston Township	Essex	0.714	-24	17
Maplewood Township	Essex	0.714	0	125
Millburn Township	Essex	0.714	-22	18
Montclair Township	Essex	0.714	-15	369
Newark City	Essex	0.714	-471	4634
North Caldwell	Essex	0.714	0	0

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Borough				
Nutley Township	Essex	0.714	0	66
City of Orange Township	Essex	0.714	-196	469
Roseland Borough	Essex	0.714	-5	1
South Orange Village	Essex	0.714	0	54
Verona Township	Essex	0.714	-39	28
West Caldwell Township	Essex	0.714	-1	3
West Orange Township	Essex	0.714	0	324
Clayton Borough	Gloucester	0.737	0	51
Deptford Township	Gloucester	0.737	0	22
East Greenwich Township	Gloucester	0.737	0	10
Elk Township	Gloucester	0.737	0	7
Franklin Township	Gloucester	0.737	0	44
Glassboro Borough	Gloucester	0.737	0	52
Greenwich Township	Gloucester	0.737	0	15
Harrison Township	Gloucester	0.737	0	10
Logan Township	Gloucester	0.737	0	0
Mantua Township	Gloucester	0.737	0	13

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Monroe Township	Gloucester	0.737	0	49
National Park Borough	Gloucester	0.737	0	6
Newfield Borough	Gloucester	0.737	0	3
Paulsboro Borough	Gloucester	0.737	0	36
Pitman Borough	Gloucester	0.737	0	23
South Harrison Township	Gloucester	0.737	0	7
Swedesborough Borough	Gloucester	0.737	0	9
Washington Township	Gloucester	0.737	0	44
Wenonah Borough	Gloucester	0.737	0	0
West Deptford Township	Gloucester	0.737	0	45
Westville Borough	Gloucester	0.737	-10	31
Woodbury City	Gloucester	0.737	0	69
Woodbury Heights Borough	Gloucester	0.737	0	10
Woolwich Township	Gloucester	0.737	0	4
Bayonne City	Hudson	0.639	0	523
East Newark Borough	Hudson	0.639	-8	29
Guttenberg Town	Hudson	0.639	0	85
Harrison Town	Hudson	0.639	-68	186
Hoboken City	Hudson	0.639	0	419

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Jersey City	Hudson	0.639	0	4764
Kearny Town	Hudson	0.639	0	442
North Bergen Township	Hudson	0.639	0	962
Secaucus Town	Hudson	0.639	0	67
Union City	Hudson	0.639	-731	1744
Weehawken Township	Hudson	0.639	-17	217
West New York Town	Hudson	0.639	-391	1136
Alexandria Township	Hunterdon	0.691	0	10
Bethlehem Township	Hunterdon	0.691	0	5
Bloomsbury Borough	Hunterdon	0.691	0	0
Califon Borough	Hunterdon	0.691	0	3
Clinton Town	Hunterdon	0.691	0	0
Clinton Township	Hunterdon	0.691	0	16
Delaware Township	Hunterdon	0.691	0	8
East Amwell Township	Hunterdon	0.691	0	9
Flemington Borough	Hunterdon	0.691	0	17
Franklin Township	Hunterdon	0.691	0	19

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Frenchtown Borough	Hunterdon	0.691	0	7
Glen Gardner Borough	Hunterdon	0.691	0	6
Hampton Borough	Hunterdon	0.691	0	2
High Bridge Borough	Hunterdon	0.691	0	0
Holland Township	Hunterdon	0.691	000	25
Kingwood Township	Hunterdon	0.691	0	11
Lambertville City	Hunterdon	0.691	-5	37
Lebanon Borough	Hunterdon	0.691	0	3
Lebanon Township	Hunterdon	0.691	0	20
Milford Borough	Hunterdon	0.691	0	6
Raritan Township	Hunterdon	0.691	0	16
Readington Township	Hunterdon	0.691	0	0
Stockton Borough	Hunterdon	0.691	0	4
Tewksbury Township	Hunterdon	0.691	0	0
Union Township	Hunterdon	0.691	0	4
West Amwell Township	Hunterdon	0.691	0	4
East Windsor Township	Mercer	0.665	-17	45

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Ewing Township	Mercer	0.665	0	73
Hamilton Township	Mercer	0.665	0	277
Hightstown Borough	Mercer	0.665	-12	30
Hopewell Borough	Mercer	0.665	0	0
Hopewell Township	Mercer	0.665	0	5
Lawrence Township	Mercer	0.665	0	47
Pennington Borough	Mercer	0.665	0	0
Princeton Borough	Mercer	0.665	-23	67
Princeton Township	Mercer	0.665	0	47
Trenton City	Mercer	0.665	-86	1158
Washington Township	Mercer	0.665	0	17
West Windsor Township	Mercer	0.665	0	23
Carteret Borough	Middlesex	0.691	0	212
Cranbury Township	Middlesex	0.691	0	6
Dunellen Borough	Middlesex	0.691	0	39
East Brunswick Township	Middlesex	0.691	0	46
Edison Township	Middlesex	0.691	0	173
Helmetta Borough	Middlesex	0.691	0	3

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Highland Park Borough	Middlesex	0.691	0	75
Jamesburg Borough	Middlesex	0.691	0	17
Old Bridge Township	Middlesex	0.691	0	142
Metuchen Borough	Middlesex	0.691	0	42
Middlesex Borough	Middlesex	0.691	0	24
Milltown Borough	Middlesex	0.691	0	10
Monroe Township	Middlesex	0.691	0	101
New Brunswick City	Middlesex	0.691	-10	832
North Brunswick Township	Middlesex	0.691	0	64
Perth Amboy City	Middlesex	0.691	-132	929
Piscataway Township	Middlesex	0.691	0	144
Plainsboro Township	Middlesex	0.691	0	44
Sayreville Borough	Middlesex	0.691	0	100
South Amboy City	Middlesex	0.691	0	28
South Brunswick Township	Middlesex	0.691	0	36
South Plainfield Borough	Middlesex	0.691	0	101
South River	Middlesex	0.691	0	91

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Borough				
Spotswood Borough	Middlesex	0.691	0	19
Woodbridge Township	Middlesex	0.691	0	300
Allenhurst Borough	Monmouth	0.665	0	1
Allentown Borough	Monmouth	0.665	0	7
Asbury Park City	Monmouth	0.665	-91	299
Atlantic Highlands Borough	Monmouth	0.665	0	6
Avon-by-the-Sea Borough	Monmouth	0.665	0	13
Belmar Borough	Monmouth	0.665	0	55
Bradley Beach Borough	Monmouth	0.665	0	31
Brielle Borough	Monmouth	0.665	0	0
Colts Neck Township	Monmouth	0.665	0	0
Deal Borough	Monmouth	0.665	0	1
Eatontown Borough	Monmouth	0.665	0	32
Englishtown Borough	Monmouth	0.665	-21	26
Fair Haven Borough	Monmouth	0.665	0	5
Farmingdale Borough	Monmouth	0.665	0	5

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Freehold Borough	Monmouth	0.665	-49	105
Freehold Township	Monmouth	0.665	0	29
Highlands Borough	Monmouth	0.665	0	21
Holmdel Township	Monmouth	0.665	-5	16
Howell Township	Monmouth	0.665	0	76
Interlaken Borough	Monmouth	0.665	0	0
Keansburg Borough	Monmouth	0.665	-1	73
Keyport Borough	Monmouth	0.665	0	23
Little Silver Borough	Monmouth	0.665	0	0
Loch Arbour Village	Monmouth	0.665	0	0
Long Branch City	Monmouth	0.665	0	322
Manalapan Township	Monmouth	0.665	0	36
Manasquan Borough	Monmouth	0.665	0	31
Marlboro Township	Monmouth	0.665	0	36
Matawan Borough	Monmouth	0.665	0	14
Aberdeen Township	Monmouth	0.665	0	31
Middletown Township	Monmouth	0.665	0	154
Millstone	Monmouth	0.665	0	15

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Township				
Monmouth Beach Borough	Monmouth	0.665	0	5
Neptune Township	Monmouth	0.665	0	173
Neptune City Borough	Monmouth	0.665	0	9
Tinton Falls Borough	Monmouth	0.665	-17	26
Ocean Township	Monmouth	0.665	0	52
Oceanport Borough	Monmouth	0.665	0	0
Hazlet Township	Monmouth	0.665	0	27
Red Bank Borough	Monmouth	0.665	0	86
Roosevelt Borough	Monmouth	0.665	0	3
Rumson Borough	Monmouth	0.665	0	0
Sea Bright Borough	Monmouth	0.665	-3	21
Sea Girt Borough	Monmouth	0.665	0	3
Shrewsbury Borough	Monmouth	0.665	0	0
Shrewsbury Township	Monmouth	0.665	0	1
South Belmar Borough	Monmouth	0.665	-9	12
Spring Lake Borough	Monmouth	0.665	-23	40
Spring Lake Heights Borough	Monmouth	0.665	0	5

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Union Beach Borough	Monmouth	0.665	0	25
Upper Freehold Township	Monmouth	0.665	0	9
Wall Township	Monmouth	0.665	0	45
West Long Branch Borough	Monmouth	0.665	0	0
Boonton Town	Morris	0.714	0	57
Boonton Township	Morris	0.714	0	0
Butler Borough	Morris	0.714	0	36
Chatham Borough	Morris	0.714	0	21
Chatham Township	Morris	0.714	0	19
Chester Borough	Morris	0.714	0	11
Chester Township	Morris	0.714	0	4
Denville Township	Morris	0.714	0	31
Dover Town	Morris	0.714	-66	251
East Hanover Township	Morris	0.714	0	0
Florham Park Borough	Morris	0.714	-42	25
Hanover Township	Morris	0.714	0	17
Harding Township	Morris	0.714	0	0
Jefferson	Morris	0.714	0	12

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Township				
Kinnelon Borough	Morris	0.714	0	14
Lincoln Park Borough	Morris	0.714	0	31
Madison Borough	Morris	0.714	0	86
Mendham Borough	Morris	0.714	0	5
Mendham Township	Morris	0.714	0	0
Mine Hill Township	Morris	0.714	0	31
Montville Township	Morris	0.714	0	14
Morris Township	Morris	0.714	0	37
Morris Plains Borough	Morris	0.714	0	4
Morristown Town	Morris	0.714	-99	169
Mountain Lakes Borough	Morris	0.714	0	0
Mount Arlington Borough	Morris	0.714	0	14
Mount Olive Township	Morris	0.714	0	67
Netcong Borough	Morris	0.714	0	10
Parsippany-Troy Hills Twp	Morris	0.714	-76	242
Long Hill Township	Morris	0.714	0	0
Pequannock Township	Morris	0.714	0	0

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Randolph Township	Morris	0.714	0	34
Riverdale Borough	Morris	0.714	0	3
Rockaway Borough	Morris	0.714	0	12
Rockaway Township	Morris	0.714	0	42
Roxbury Township	Morris	0.714	0	35
Victory Gardens Borough	Morris	0.714	-1	21
Washington Township	Morris	0.714	0	6
Wharton Borough	Morris	0.714	0	29
Barnegat Light Borough	Ocean	0.665	0	4
Bay Head Borough	Ocean	0.665	0	5
Beach Haven Borough	Ocean	0.665	0	0
Beachwood Borough	Ocean	0.665	0	19
Berkeley Township	Ocean	0.665	0	63
Brick Township	Ocean	0.665	0	92
Dover Township	Ocean	0.665	0	92
Eagleswood Township	Ocean	0.665	0	2
Harvey Cedars Borough	Ocean	0.665	0	0
Island Heights Borough	Ocean	0.665	0	0

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Jackson Township	Ocean	0.665	0	46
Lacey Township	Ocean	0.665	0	25
Lakehurst Borough	Ocean	0.665	0	2
Lakewood Township	Ocean	0.665	-163	350
Lavallette Borough	Ocean	0.665	0	0
Little Egg Harbor Township	Ocean	0.665	0	0
Long Beach Township	Ocean	0.665	0	0
Manchester Township	Ocean	0.665	0	38
Mantoloking Borough	Ocean	0.665	0	2
Ocean Township	Ocean	0.665	0	11
Ocean Gate Borough	Ocean	0.665	0	5
Pine Beach Borough	Ocean	0.665	0	0
Plumsted Township	Ocean	0.665	0	9
Point Pleasant Borough	Ocean	0.665	0	15
Point Pleasant Beach Boro	Ocean	0.665	-15	44
Seaside Heights Borough	Ocean	0.665	-1	18

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Seaside Park Borough	Ocean	0.665	0	9
Ship Bottom Borough	Ocean	0.665	0	7
South Toms River Borough	Ocean	0.665	0	3
Stafford Township	Ocean	0.665	0	24
Surf City Borough	Ocean	0.665	0	4
Tuckerton Borough	Ocean	0.665	0	5
Barnegat Township	Ocean	0.665	0	0
Bloomingdale Borough	Passaic	0.639	0	16
Clifton City	Passaic	0.639	0	710
Haledon Borough	Passaic	0.639	0	81
Hawthorne Borough	Passaic	0.639	0	34
Little Falls Township	Passaic	0.639	0	15
North Haledon Borough	Passaic	0.639	0	0
Passaic City	Passaic	0.639	-742	1484
Paterson City	Passaic	0.639	-396	2896
Pompton Lakes Borough	Passaic	0.639	0	36
Prospect Park	Passaic	0.639	0	60

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Borough				
Ringwood Borough	Passaic	0.639	0	30
Totowa Borough	Passaic	0.639	0	35
Wanaque Borough	Passaic	0.639	0	35
Wayne Township	Passaic	0.639	0	84
West Milford Township	Passaic	0.639	0	66
West Paterson Borough	Passaic	0.639	0	19
Alloway Township	Salem	0.715	0	8
Elmer Borough	Salem	0.715	0	5
Elsinboro Township	Salem	0.715	0	0
Lower Alloways Creek Twp	Salem	0.715	0	11
Mannington Township	Salem	0.715	0	7
Oldmans Township	Salem	0.715	0	5
Penns Grove Borough	Salem	0.715	-4	62
Pennsville Township	Salem	0.715	0	19
Pilesgrove Township	Salem	0.715	0	4
Pittsgrove Township	Salem	0.715	0	17
Quinton	Salem	0.715	0	9

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Township				
Salem City	Salem	0.715	0	56
Carneys Point Township	Salem	0.715	0	21
Upper Pittsgrove Township	Salem	0.715	0	4
Woodstown Borough	Salem	0.715	0	19
Bedminster Township	Somerset	0.691	0	0
Bernards Township	Somerset	0.691	0	12
Bernardsville Borough	Somerset	0.691	0	15
Bound Brook Borough	Somerset	0.691	-62	131
Branchburg Township	Somerset	0.691	-10	22
Bridgewater Township	Somerset	0.691	0	97
Far Hills Borough	Somerset	0.691	0	2
Franklin Township	Somerset	0.691	-49	142
Green Brook Township	Somerset	0.691	0	0
Hillsborough Township	Somerset	0.691	0	19
Manville Borough	Somerset	0.691	-25	70
Millstone Borough	Somerset	0.691	0	2

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Montgomery Township	Somerset	0.691	0	11
North Plainfield Borough	Somerset	0.691	-43	282
Peapack-Gladstone Borough	Somerset	0.691	0	6
Raritan Borough	Somerset	0.691	0	44
Rocky Hill Borough	Somerset	0.691	0	4
Somerville Borough	Somerset	0.691	0	73
South Bound Brook Borough	Somerset	0.691	-34	51
Warren Township	Somerset	0.691	0	13
Watchung Borough	Somerset	0.691	0	12
Andover Borough	Sussex	0.639	0	0
Andover Township	Sussex	0.639	0	0
Branchville Borough	Sussex	0.639	0	0
Byram Township	Sussex	0.639	0	24
Frankford Township	Sussex	0.639	0	6
Franklin Borough	Sussex	0.639	0	21
Fredon Township	Sussex	0.639	0	0
Green Township	Sussex	0.639	0	5
Hamburg Borough	Sussex	0.639	0	7
Hampton	Sussex	0.639	0	0

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Township				
Hardyston Township	Sussex	0.639	0	9
Hopatcong Borough	Sussex	0.639	0	33
Lafayette Township	Sussex	0.639	0	3
Montague Township	Sussex	0.639	0	15
Newton Town	Sussex	0.639	0	43
Ogdensburg Borough	Sussex	0.639	0	7
Sandyston Township	Sussex	0.639	0	6
Sparta Township	Sussex	0.639	0	15
Stanhope Borough	Sussex	0.639	0	4
Stillwater Township	Sussex	0.639	0	18
Sussex Borough	Sussex	0.639	-10	35
Vernon Township	Sussex	0.639	0	31
Walpack Township	Sussex	0.639	0	0
Wantage Township	Sussex	0.639	0	0
Berkeley Heights Township	Union	0.714	-1	24
Clark Township	Union	0.714	0	11
Cranford Township	Union	0.714	0	55

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Elizabeth City	Union	0.714	-429	2728
Fanwood Borough	Union	0.714	0	34
Garwood Borough	Union	0.714	0	10
Hillside Township	Union	0.714	-1	178
Kenilworth Borough	Union	0.714	0	26
Linden City	Union	0.714	-64	193
Mountainside Borough	Union	0.714	-16	28
New Providence Borough	Union	0.714	0	19
Plainfield City	Union	0.714	-272	690
Rahway City	Union	0.714	-102	196
Roselle Borough	Union	0.714	-38	167
Roselle Park Borough	Union	0.714	-35	96
Scotch Plains Township	Union	0.714	0	26
Springfield Township	Union	0.714	0	19
Summit City	Union	0.714	0	76
Union Township	Union	0.714	-4	199
Westfield Town	Union	0.714	0	41
Winfield Township	Union	0.714	0	18
Allamuchy Township	Warren	0.714	0	4

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Alpha Borough	Warren	0.714	0	2
Belvidere Town	Warren	0.714	0	7
Blairstown Township	Warren	0.714	0	16
Franklin Township	Warren	0.714	0	9
Frelinghuysen Township	Warren	0.714	0	6
Greenwich Township	Warren	0.714	0	20
Hackettstown Town	Warren	0.714	0	76
Hardwick Township	Warren	0.714	0	3
Harmony Township	Warren	0.714	0	3
Hope Township	Warren	0.714	0	9
Independence Township	Warren	0.714	0	19
Knowlton Township	Warren	0.714	0	14
Liberty Township	Warren	0.714	0	11
Lopatcong Township	Warren	0.714	0	11
Mansfield Township	Warren	0.714	0	0
Oxford Township	Warren	0.714	0	6
Phillipsburg	Warren	0.714	0	95

Municipality	County	Low-/ Moderate-Income Share	Rehab. Share Credit	Total Rehab. Share
Town				
Pohatcong Township	Warren	0.714	0	0
Washington Borough	Warren	0.714	0	52
Washington Township	Warren	0.714	0	0
White Township	Warren	0.714	0	0

<1> While units were likely brought up to code ("spontaneously rehabilitated") over the course of the study period, others likely fell out of compliance, and it was not possible to verify the number of properties doing either one. In addition, spontaneous rehabilitations were likely captured in the updated filtering numbers.

APPENDIX C

COUNCIL ON AFFORDABLE HOUSING (COAH)

PRIOR ROUND AFFORDABLE NEED UPDATED METHODOLOGY

CONTENTS

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INTRODUCTION

As part of this effort, researchers also reviewed prior round obligation numbers and updated those numbers based on the latest data available for measuring secondary sources of supply. Replicating the existing methodology with updated data (described in detail below) increased municipalities' collective prior round obligation by 992 units in comparison to the 1993 unadjusted obligations. COAH is adopting municipalities' unadjusted 1987 to 1999 obligations, first published in 1993, which totaled 85,964, as shown in this Appendix. These are the numbers under which municipalities received substantive certification for their second round new construction obligations (prior round obligation). The methodology description below details the process researchers undertook to validate and update (where indicated) the prior round obligation numbers.

THE ADJUSTED BASE

In 1993, COAH released municipal-level affordable housing obligations that consisted of Indigenous Need *plus* Reallocated Present Need *plus* Prospective Need (1993 to 1999) *plus* Prior Round Prospective Need *plus* Demolitions *minus* Filtered Units *minus* Residential Conversions *minus* Spontaneous Rehabilitations. The Prior Round Prospective Need, as published in 1993, was updated by the prior research team of Robert W. Burchell and William R. Dolphin, from Rutgers University, in 2004.

Replication efforts followed the methodology described in the Existing Third Round Rules, used data presented in the August 19, 2004, OPRA response, and accepted the chapter Appendix A assertion that 2000 Census data indicated a 25 percent increase in all previously published projections (based on 1993 numbers). This effort recalculated only 1993 to 1999 Prospective Need, Demolitions, Filtered Units, and Residential Conversions. (The First Round Prospective Need was already adjusted in 1993 to reflect the difference between 1987 projections and data published in 1993 based on the 1990 Census.)

This work resulted in a Prior Round Obligation of 3,844 more units than previously published. These updated numbers were used as the Adjusted Base in this methodology.

COAH Region		Adjusted Base
1	Northeast	12,882
2	Northwest	7,490
3	West Central	17,573
4	East Central	32,602
5	Southwest	18,303
6	South-Southwest	10,582
Total		99,432

Again, the Adjusted Base of 99,432 units consists of the following three components: 1) the first round prior round prospective need of 38,202 units; 2) the second round prospective need of 42,127 units with a 25 percent increase in the 1993 numbers, resulting in 52,658 units; and 3) the second round reallocated present need of 8,572 units. The remaining reallocated present need was credited to the third round Rehabilitation Share.

DEMOLITIONS

Demolition data by municipality is available from the New Jersey Construction Reporter for the years 1996 to 2007. Statewide demolition totals from 1990 to 1999 were listed in the existing Third Round Substantive Rules. To determine the number of demolitions in each municipality between 1993 and 1999, this methodology first gathered municipal-level data for 1996 to 1999 from the New Jersey Construction Reporter. Next, this methodology analyzed the State-level data to determine what portion of New Jersey demolitions occurring between 1993 and 1999 occurred between 1996 and 1999.

Year	Demolitions	Breakdown
1993	1,430	30 percent
1994	1,471	
1995	3,350	
1996	2,642	70 percent

Year	Demolitions	Breakdown
1997	4,918	
1998	2,867	
1999	4,052	
Total	20,730	

It was assumed that this breakdown held at the municipal level as well, or that each municipal total for 1996 to 1999 represented 70 percent of a community's total number of demolitions from 1993 to 1999. Therefore, to get a demolition figure for 1993 to 1999 at the municipal level, each municipal total from 1996 to 1999 was divided by 70 percent.

To isolate demolitions affecting low- and moderate-income households (by removing stock affordable to these households), this methodology then multiplied municipality demolition totals by 19.5 percent, the portion of New Jersey's housing valued at a level that low- and moderate-income households can afford. <1>

COAH Region		Demolitions (1993-1999)
1	Northeast	587
2	Northwest	1,422
3	West Central	298
4	East Central	556
5	Southwest	383
6	South-Southwest	795
Total		4,040

FILTERING

Econsult reviewed comprehensive property-level data on all paired home transactions in New Jersey from 1989-2006 to

identify "filtered" housing unit - those that experienced a significant price change and whose occupant experienced a significant income change. Researchers further refined this analysis to focus only on those units starting or ending at values affordable to low- and moderate-income households or with occupants earning incomes below 80 percent of their regional median. (These methods are described in further detail in chapter Appendix F.)

According to Econsult's analysis (described in further detail in Appendix F), 7,796 units filtered down to households of lower incomes between 1993 and 1999:

COAH Region		Filtering (1993-1999)
1	Northeast	3,422
2	Northwest	1,708
3	West Central	402
4	East Central	554
5	Southwest	1,351
6	South-Southwest	359
Total		7,796

RESIDENTIAL CONVERSIONS

This methodology replicated the technique used in the previously released Third Round Substantive Rules, using the following steps to quantify residential conversions:

-- The **change in total units** was derived by subtracting the number of housing units reported by the U.S. Census in 1990 from the number of housing units reported by the U.S. Census in 2000.

-- **Certificates of Occupancy** numbers are available at the municipal level from the New Jersey Construction Reporter for 1996 to 1999. These totals were extrapolated to the 1990 to 1999 time span by analyzing building permits issued at the state level from 1990 to 1999 (available from the U.S. Census at http://www.census.gov/const/www/C40/table2.html#annual) to determine what portion of New Jersey building permits issued between 1990 and 1999 were issued between 1996 and 1999. It was assumed that the same breakdown held at the municipal level, or that each municipal total for 1996 to 1999 represented 48 percent of a community's total number of certifications from 1990 to 1999. Therefore, to get a certification figure for 1990 to 1999 at the municipal level, each municipal total from 1996 to 1999 was divided by 48 percent.

-- **Demolition** data was collected at the municipal level from the New Jersey Construction Reporter for the years 1996 to 1999. To determine the number of demolitions in each municipality between 1990 and 1999, this methodology analyzed the State-level data to determine what portion of New Jersey demolitions occurring between 1990 and 1999 occurred between 1996 and 1999. It was assumed that this breakdown held at the municipal level, or that each

municipal total for 1996 to 1999 represented 55 percent of a community's total number of demolitions from 1990 to 1999. Therefore, to get a demolition figure for 1990 to 1999 at the municipal level, each municipal total from 1996 to 1999 was divided by 55 percent.

Residential Conversions = Change in Units minus C of Os plus Demolitions

This methodology assumed that 19.5 percent of residential conversions were occupied by low- or moderate-income households. (In 2000, this portion of all New Jersey housing units was affordable to low- and moderate-income households.) The number of residential conversions affecting low- and moderate-income households between 1993 and 1999 is simply two-thirds (66.67 percent) of the Low-/Moderate-Income Share of Residential Conversions occurring between 1990 and 1999.

If a municipality lost low- or moderate-income units through conversions (the case in 257 communities), its residential conversion figure was 0. This was done because filtering numbers implicitly account for any loss of stocks.

Ultimately, these calculations indicated that there were 8,720 residential conversions statewide between 1993 and 1999:

COAH Region		Residential Conversions (1993-1999)
1	Northeast	2,338
2	Northwest	1,833
3	West Central	1,334
4	East Central	1,273
5	Southwest	1,299
6	South-Southwest	643
Total		8,720

REACHING AN UPDATED PRIOR ROUND AFFORDABLE HOUSING NEED

The Updated Affordable Housing Need in is equal to the Adjusted Base *plus* Demolitions *minus* Filtering *minus* Residential Conversions. <2> According to this analysis, 58 municipalities had negative Updated Prior Round Need

numbers. Converting these negative figures to zero results in the following regional and Statewide totals: <3>

COAH Region		Updated Prior Round Need
1	Northeast	11,355
2	Northwest	6,774
3	West Central	16,310
4	East Central	31,931
5	Southwest	16,988
6	South-Southwest	10,456
Total		93,813

The municipal level figures are as follows:

Municipality	County	1987-99 Obligation
Absecon City	Atlantic County	144
Atlantic City	Atlantic County	2,458
Brigantine City	Atlantic County	124
Buena Borough	Atlantic County	41
Buena Vista Township	Atlantic County	19
Corbin City	Atlantic County	13
Egg Harbor City	Atlantic County	42

Municipality	County	1987-99 Obligation
Egg Harbor Township	Atlantic County	763
Estell Manor City	Atlantic County	21
Folsom Borough	Atlantic County	20
Galloway Township	Atlantic County	328
Hamilton Township	Atlantic County	349
Hammonton Town	Atlantic County	257
Linwood City	Atlantic County	140
Longport Borough	Atlantic County	59
Margate City	Atlantic County	96
Mullica Township	Atlantic County	40
Northfield City	Atlantic County	190
Pleasantville City	Atlantic County	0
Port Republic City	Atlantic County	19
Somers Point City	Atlantic County	103
Ventnor City	Atlantic County	27
Weymouth Township	Atlantic County	15
TOTAL ATLANTIC		5,268
Allendale Borough	Bergen County	137

Municipality	County	1987-99 Obligation
Alpine Borough	Bergen County	214
Bergenfield Borough	Bergen County	87
Bogota Borough	Bergen County	13
Carlstadt Borough	Bergen County	228
Cliffside Park Borough	Bergen County	28
Closter Borough	Bergen County	110
Cresskill Borough	Bergen County	70
Demarest Borough	Bergen County	66
Dumont Borough	Bergen County	34
East Rutherford Borough	Bergen County	90
Edgewater Borough	Bergen County	28
Elmwood Park Borough	Bergen County	54
Emerson Borough	Bergen County	74
Englewood City	Bergen County	152
Englewood Cliffs Borough	Bergen County	219
Fair Lawn Borough	Bergen County	152
Fairview Borough	Bergen County	20
Fort Lee Borough	Bergen County	180

Municipality	County	1987-99 Obligation
Franklin Lakes Borough	Bergen County	358
Garfield City	Bergen County	0
Glen Rock Borough	Bergen County	118
Hackensack City	Bergen County	201
Harrington Park Borough	Bergen County	56
Hasbrouck Heights Borough	Bergen County	58
Haworth Borough	Bergen County	64
Hillsdale Borough	Bergen County	111
Hohokus Borough	Bergen County	83
Leonia Borough	Bergen County	30
Little Ferry Borough	Bergen County	28
Lodi Borough	Bergen County	0
Lyndhurst Township	Bergen County	100
Mahwah Township	Bergen County	350
Maywood Borough	Bergen County	36
Midland Park Borough	Bergen County	54
Montvale Borough	Bergen County	255
Moonachie Borough	Bergen County	95

Municipality	County	1987-99 Obligation
New Milford Borough	Bergen County	23
North Arlington Borough	Bergen County	4
Northvale Borough	Bergen County	86
Norwood Borough	Bergen County	118
Oakland Borough	Bergen County	220
Old Tappan Borough	Bergen County	98
Oradell Borough	Bergen County	89
Palisades Park Borough	Bergen County	0
Paramus Borough	Bergen County	698
Park Ridge Borough	Bergen County	112
Ramsey Borough	Bergen County	189
Ridgefield Borough	Bergen County	47
Ridgefield Park Village	Bergen County	25
Ridgewood Village	Bergen County	229
River Edge Borough	Bergen County	73
River Vale Township	Bergen County	121
Rochelle Park Township	Bergen County	64
Rockleigh Borough	Bergen County	84

Municipality	County	1987-99 Obligation
Rutherford Borough	Bergen County	95
Saddle Brook Township	Bergen County	127
Saddle River Borough	Bergen County	162
South Hackensack Township	Bergen County	50
Teaneck Township	Bergen County	192
Tenafly Borough	Bergen County	159
Teterboro Borough	Bergen County	106
Upper Saddle River Borough	Bergen County	206
Waldwick Borough	Bergen County	81
Wallington Borough	Bergen County	5
Washington Township	Bergen County	85
Westwood Borough	Bergen County	87
Woodcliff Lake Borough	Bergen County	170
Wood-Ridge Borough	Bergen County	38
Wyckoff Township	Bergen County	221
TOTAL BERGEN		8,017
Bass River Township	Burlington County	15
Beverly City	Burlington County	18

Municipality	County	1987-99 Obligation
Bordentown City	Burlington County	33
Bordentown Township	Burlington County	211
Burlington City	Burlington County	89
Burlington Township	Burlington County	445
Chesterfield Township	Burlington County	55
Cinnaminson Township	Burlington County	331
Delanco Township	Burlington County	61
Delran Township	Burlington County	208
Eastampton Township	Burlington County	49
Edgewater Park Township	Burlington County	30
Evesham Township	Burlington County	534
Fieldsboro Borough	Burlington County	19
Florence Township	Burlington County	114
Hainesport Township	Burlington County	150
Lumberton Township	Burlington County	152
Mansfield Township	Burlington County	114
Maple Shade Township	Burlington County	0
Medford Lakes Borough	Burlington County	60

Municipality	County	1987-99 Obligation
Medford Township	Burlington County	418
Moorestown Township	Burlington County	621
Mount Holly Township	Burlington County	0
Mount Laurel Township	Burlington County	815
New Hanover Township	Burlington County	4
North Hanover Township	Burlington County	1
Palmyra Borough	Burlington County	39
Pemberton Borough	Burlington County	9
Pemberton Township	Burlington County	0
Riverside Township	Burlington County	6
Riverton Borough	Burlington County	15
Shamong Township	Burlington County	84
Southampton Township	Burlington County	85
Springfield Township	Burlington County	54
Tabernacle Township	Burlington County	106
Washington Township	Burlington County	11
Westampton Township	Burlington County	221
Willingboro Township	Burlington County	268

Municipality	County	1987-99 Obligation
Woodland Township	Burlington County	19
Wrightstown Borough	Burlington County	10
TOTAL BURLINGTON		5,474
Audubon Borough	Camden County	0
Audubon Park Borough	Camden County	4
Barrington Borough	Camden County	8
Bellmawr Borough	Camden County	107
Berlin Borough	Camden County	154
Berlin Township	Camden County	109
Brooklawn Borough	Camden County	23
Camden City	Camden County	0
Cherry Hill Township	Camden County	1,829
Chesilhurst Borough	Camden County	28
Clementon Borough	Camden County	19
Collingswood Borough	Camden County	0
Gibbsboro Borough	Camden County	112
Gloucester City	Camden County	0
Gloucester Township	Camden County	359

Municipality	County	1987-99 Obligation
Haddon Heights Borough	Camden County	23
Haddon Township	Camden County	35
Haddonfield Borough	Camden County	192
Hi-Nella Borough	Camden County	0
Laurel Springs Borough	Camden County	17
Lawnside Borough	Camden County	33
Lindenwold Borough	Camden County	0
Magnolia Borough	Camden County	22
Merchantville Borough	Camden County	0
Mount Ephraim Borough	Camden County	33
Oaklyn Borough	Camden County	1
Pennsauken Township	Camden County	0
Pine Hill Borough	Camden County	22
Pine Valley Borough	Camden County	47
Runnemede Borough	Camden County	40
Somerdale Borough	Camden County	95
Stratford Borough	Camden County	70
Tavistock Borough	Camden County	80

Municipality	County	1987-99 Obligation
Voorhees Township	Camden County	456
Waterford Township	Camden County	102
Winslow Township	Camden County	377
Woodlynne Borough	Camden County	0
TOTAL CAMDEN		4,397
Avalon Borough	Cape May County	234
Cape May City	Cape May County	58
Cape May Point Borough	Cape May County	34
Dennis Township	Cape May County	220
Lower Township	Cape May County	324
Middle Township	Cape May County	454
North Wildwood City	Cape May County	80
Ocean City City	Cape May County	411
Sea Isle City City	Cape May County	109
Stone Harbor Borough	Cape May County	141
Upper Township	Cape May County	317
West Cape May Borough	Cape May County	7
West Wildwood Borough	Cape May County	33

Municipality	County	1987-99 Obligation
Wildwood City	Cape May County	113
Wildwood Crest Borough	Cape May County	42
Woodbine Borough	Cape May County	88
TOTAL CAPE MAY		2,665
Bridgeton City	Cumberland County	0
Commercial Township	Cumberland County	45
Deerfield Township	Cumberland County	41
Downe Township	Cumberland County	10
Fairfield Township	Cumberland County	79
Greenwich Township	Cumberland County	13
Hopewell Township	Cumberland County	114
Lawrence Township	Cumberland County	10
Maurice River Township	Cumberland County	22
Millville City	Cumberland County	0
Shiloh Borough	Cumberland County	7
Stow Creek Township	Cumberland County	14
Upper Deerfield Township	Cumberland County	242
Vineland City	Cumberland County	0

Municipality	County	1987-99 Obligation
TOTAL CUMBERLAND		597
Belleville Township	Essex County	0
Bloomfield Township	Essex County	0
Caldwell Borough Township	Essex County	0
Cedar Grove Township	Essex County	70
City of Orange Township	Essex County	0
East Orange City	Essex County	0
Essex Fells Township	Essex County	40
Fairfield Township	Essex County	318
Glen Ridge Borough Township	Essex County	28
Irvington Town	Essex County	0
Livingston Township	Essex County	375
Maplewood Township	Essex County	51
Millburn Township	Essex County	261
Montclair Township	Essex County	0
Newark City	Essex County	0
North Caldwell Township	Essex County	63
Nutley Township	Essex County	29

Municipality	County	1987-99 Obligation
Roseland Borough	Essex County	182
South Orange Village Township	Essex County	63
Verona Township	Essex County	24
West Caldwell Township	Essex County	200
West Orange Township	Essex County	226
TOTAL ESSEX		1,930
Clayton Borough	Gloucester County	94
Deptford Township	Gloucester County	522
East Greenwich Township	Gloucester County	252
Elk Township	Gloucester County	127
Franklin Township	Gloucester County	166
Glassboro Borough	Gloucester County	0
Greenwich Township	Gloucester County	308
Harrison Township	Gloucester County	198
Logan Township	Gloucester County	455
Mantua Township	Gloucester County	292
Monroe Township	Gloucester County	439
National Park Borough	Gloucester County	28

Municipality	County	1987-99 Obligation
Newfield Borough	Gloucester County	14
Paulsboro Township	Gloucester County	0
Pitman Borough	Gloucester County	40
South Harrison Township	Gloucester County	31
Swedesboro Borough	Gloucester County	23
Washington Township	Gloucester County	507
Wenonah Borough	Gloucester County	30
West Deptford Township	Gloucester County	368
Westville Borough	Gloucester County	27
Woodbury City	Gloucester County	0
Woodbury Heights Borough	Gloucester County	55
Woolwich Township	Gloucester County	209
TOTAL GLOUCESTER		4,185
Bayonne City	Hudson County	0
East Newark Borough	Hudson County	2
Guttenerg Borough	Hudson County	23
Harrison Town	Hudson County	30
Hoboken City	Hudson County	0

Municipality	County	1987-99 Obligation
Jersey City	Hudson County	0
Kearny Town	Hudson County	211
North Bergen Township	Hudson County	0
Secaucus Town	Hudson County	590
Union City	Hudson County	0
Weehawken Township	Hudson County	3
West New York Town	Hudson County	0
TOTAL HUDSON		859
Alexandria Township	Hunterdon County	22
Bethlehem Township	Hunterdon County	42
Bloomsbury Borough	Hunterdon County	17
Califon Borough	Hunterdon County	21
Clinton Town	Hunterdon County	51
Clinton Township	Hunterdon County	335
Delaware Township	Hunterdon County	23
East Amwell Township	Hunterdon County	40
Flemington Borough	Hunterdon County	38
Franklin Township	Hunterdon County	36

Municipality	County	1987-99 Obligation
Frenchtown Borough	Hunterdon County	2
Glen Gardner Borough	Hunterdon County	7
Hampton Borough	Hunterdon County	2
High Bridge Borough	Hunterdon County	27
Holland Township	Hunterdon County	17
Kingwood Township	Hunterdon County	19
Lambertville City	Hunterdon County	0
Lebanon Borough	Hunterdon County	34
Lebanon Township	Hunterdon County	28
Milford Borough	Hunterdon County	5
Raritan Township	Hunterdon County	360
Readington Township	Hunterdon County	394
Stockton Borough	Hunterdon County	6
Tewksbury Township	Hunterdon County	119
Union Township	Hunterdon County	78
West Amwell Township	Hunterdon County	16
TOTAL HUNTERDON		1,739
East Windsor Township	Mercer County	367

Municipality	County	1987-99 Obligation
Ewing Township	Mercer County	481
Hamilton Township	Mercer County	706
Hightstown Borough	Mercer County	45
Hopewell Borough	Mercer County	29
Hopewell Township	Mercer County	520
Lawrence Township	Mercer County	891
Pennington Borough	Mercer County	52
Princeton Borough	Mercer County	311
Princeton Township	Mercer County	330
Trenton City	Mercer County	0
Washington Township	Mercer County	293
West Windsor Township	Mercer County	899
TOTAL MERCER		4,924
Carteret Borough	Middlesex County	0
Cranbury Township	Middlesex County	217
Dunellen Borough	Middlesex County	0
East Brunswick Township	Middlesex County	648
Edison Township	Middlesex County	965

Municipality	County	1987-99 Obligation
Helmetta Borough	Middlesex County	26
Highland Park Borough	Middlesex County	0
Jamesburg Borough	Middlesex County	8
Metuchen Borough	Middlesex County	99
Middlesex Borough	Middlesex County	105
Milltown Borough	Middlesex County	64
Monroe Township	Middlesex County	554
New Brunswick City	Middlesex County	0
North Brunswick Township	Middlesex County	395
Old Bridge Township	Middlesex County	439
Perth Amboy City	Middlesex County	0
Piscataway Township	Middlesex County	736
Plainsboro Township	Middlesex County	205
Sayreville Borough	Middlesex County	261
South Amboy City	Middlesex County	0
South Brunswick Township	Middlesex County	841
South Plainfield Borough	Middlesex County	379
South River Borough	Middlesex County	0

Municipality	County	1987-99 Obligation
Spotswood Borough	Middlesex County	48
Woodbridge Township	Middlesex County	955
TOTAL MIDDLESEX		6,945
Aberdeen Township	Monmouth County	270
Allenhurst Borough	Monmouth County	50
Allentown Borough	Monmouth County	28
Asbury Park City	Monmouth County	0
Atlantic Highlands Borough	Monmouth County	86
Avon by the Sea Borough	Monmouth County	20
Belmar Borough	Monmouth County	59
Bradley Beach Borough	Monmouth County	20
Brielle Borough	Monmouth County	159
Colts Neck Township	Monmouth County	218
Deal Borough	Monmouth County	54
Eatontown Borough	Monmouth County	504
Englishtown Borough	Monmouth County	65
Fair Haven Borough	Monmouth County	135
Farmingdale Borough	Monmouth County	19

Municipality	County	1987-99 Obligation
Freehold Borough	Monmouth County	188
Freehold Township	Monmouth County	1,036
Hazlet Township	Monmouth County	407
Highlands Borough	Monmouth County	20
Holmdel Township	Monmouth County	768
Howell Township	Monmouth County	955
Interlaken Borough	Monmouth County	40
Keansburg Borough	Monmouth County	0
Keyport Borough	Monmouth County	1
Little Silver Borough	Monmouth County	197
Loch Arbour Village	Monmouth County	31
Long Branch City	Monmouth County	0
Manalapan Township	Monmouth County	706
Manasquan Borough	Monmouth County	149
Marlboro Township	Monmouth County	1,019
Matawan Borough	Monmouth County	141
Middletown Township	Monmouth County	1,561
Millstone Township	Monmouth County	81

Municipality	County	1987-99 Obligation
Monmouth Beach Borough	Monmouth County	70
Neptune City Borough	Monmouth County	33
Neptune Township	Monmouth County	0
Ocean Township	Monmouth County	873
Oceanport Borough	Monmouth County	149
Red Bank Borough	Monmouth County	427
Roosevelt Borough	Monmouth County	29
Rumson Borough	Monmouth County	268
Sea Bright Borough	Monmouth County	37
Sea Girt Borough	Monmouth County	115
Shrewsbury Borough	Monmouth County	277
Shrewsbury Township	Monmouth County	12
South Belmar Borough	Monmouth County	30
Spring Lake Borough	Monmouth County	132
Spring Lake Heights Borough	Monmouth County	76
Tinton Falls Borough	Monmouth County	622
Union Beach Borough	Monmouth County	83
Upper Freehold Borough	Monmouth County	43

Municipality	County	1987-99 Obligation
Wall Township	Monmouth County	1,073
West Long Branch Borough	Monmouth County	219
TOTAL MONMOUTH		13,555
Boonton Town	Morris County	11
Boonton Township	Morris County	20
Butler Borough	Morris County	16
Chatham Borough	Morris County	77
Chatham Township	Morris County	83
Chester Borough	Morris County	16
Chester Township	Morris County	32
Denville Township	Morris County	325
Dover Town	Morris County	6
East Hanover Township	Morris County	262
Florham Park Borough	Morris County	326
Hanover Township	Morris County	356
Harding Township	Morris County	83
Jefferson Township	Morris County	69
Kinnelon Borough	Morris County	73

Municipality	County	1987-99 Obligation
Lincoln Park Borough	Morris County	74
Long Hill Township	Morris County	62
Madison Borough	Morris County	86
Mendham Borough	Morris County	25
Mendham Township	Morris County	41
Mine Hill Township	Morris County	61
Montville Township	Morris County	261
Morris Plains Borough	Morris County	144
Morris Township	Morris County	293
Morristown Town	Morris County	227
Mount Arlington Borough	Morris County	17
Mount Olive Township	Morris County	45
Mountain Lakes Borough	Morris County	80
Netcong Borough	Morris County	0
Parsippany-Troy Hills Township	Morris County	664
Pequannock Township	Morris County	134
Randolph Township	Morris County	261
Riverdale Borough	Morris County	58

Municipality	County	1987-99 Obligation
Rockaway Borough	Morris County	43
Rockaway Township	Morris County	370
Roxbury Township	Morris County	255
Victory Gardens Borough	Morris County	0
Washington Township	Morris County	66
Wharton Borough	Morris County	42
TOTAL MORRIS		5,064
Barnegat Light Borough	Ocean County	84
Barnegat Township	Ocean County	329
Bay Head Borough	Ocean County	65
Beach Haven Borough	Ocean County	70
Beachwood Borough	Ocean County	123
Berkeley Township	Ocean County	610
Brick Township	Ocean County	930
Dover Township	Ocean County	2,233
Eagleswood Township	Ocean County	36
Harvey Cedars Borough	Ocean County	37
Island Heights Borough	Ocean County	31

Municipality	County	1987-99 Obligation
Jackson Township	Ocean County	1,247
Lacey Township	Ocean County	580
Lakehurst Borough	Ocean County	66
Lakewood Township	Ocean County	0
Lavallette Borough	Ocean County	82
Little Egg Harbor Township	Ocean County	194
Long Beach Township	Ocean County	41
Manchester Township	Ocean County	370
Mantoloking Borough	Ocean County	59
Ocean Gate Borough	Ocean County	12
Ocean Township	Ocean County	236
Pine Beach Borough	Ocean County	41
Plumsted Township	Ocean County	47
Point Pleasant Beach Borough	Ocean County	167
Point Pleasant Borough	Ocean County	343
Seaside Heights Borough	Ocean County	0
Seaside Park Borough	Ocean County	52
Ship Bottom Borough	Ocean County	71

Municipality	County	1987-99 Obligation
South Toms River Borough	Ocean County	51
Stafford Township	Ocean County	555
Surf City Borough	Ocean County	49
Tuckerton Borough	Ocean County	69
TOTAL OCEAN		8,880
Bloomingdale Borough	Passaic County	168
Clifton City	Passaic County	379
Haledon Borough	Passaic County	5
Hawthorne Borough	Passaic County	58
Little Falls Township	Passaic County	101
North Haledon Borough	Passaic County	92
Passaic City	Passaic County	0
Paterson City	Passaic County	0
Pompton Lakes Borough	Passaic County	102
Prospect Park Borough	Passaic County	0
Ringwood Borough	Passaic County	51
Totowa Borough	Passaic County	247
Wanaque Borough	Passaic County	332

Municipality	County	1987-99 Obligation
Wayne Township	Passaic County	1,158
West Milford Township	Passaic County	98
West Paterson Borough	Passaic County	146
TOTAL PASSAIC		2,937
Alloway Township	Salem County	17
Carneys Point Township	Salem County	184
Elmer Borough	Salem County	12
Elsinboro Township	Salem County	26
Lower Alloways Creek Township	Salem County	26
Mannington Township	Salem County	19
Oldmans Township	Salem County	183
Penns Grove Borough	Salem County	4
Pennsville Township	Salem County	228
Pilesgrove Township	Salem County	35
Pittsgrove Township	Salem County	58
Quinton Township	Salem County	15
Salem City	Salem County	0
Upper Pittsgrove Township	Salem County	27

Municipality	County	1987-99 Obligation
Woodstown Borough	Salem County	8
TOTAL SALEM		842
Bedminster Township	Somerset County	154
Bernards Township	Somerset County	508
Bernardsville Borough	Somerset County	127
Bound Brook Borough	Somerset County	0
Branchburg Township	Somerset County	302
Bridgewater Township	Somerset County	713
Far Hills Borough	Somerset County	38
Franklin Township	Somerset County	766
Green Brook Township	Somerset County	151
Hillsborough Township	Somerset County	461
Manville Borough	Somerset County	0
Millstone Borough	Somerset County	21
Montgomery Township	Somerset County	307
North Plainfield Borough	Somerset County	0
Peapack - Gladstone Borough	Somerset County	82
Raritan Borough	Somerset County	82

Municipality	County	1987-99 Obligation
Rocky Hill Borough	Somerset County	25
Somerville Borough	Somerset County	153
South Bound Brook Borough	Somerset County	0
Warren Township	Somerset County	543
Watchung Borough	Somerset County	206
TOTAL SOMERSET		4,639
Andover Borough	Sussex County	7
Andover Township	Sussex County	55
Branchville Borough	Sussex County	13
Byram Township	Sussex County	33
Frankford Township	Sussex County	36
Franklin Borough	Sussex County	9
Fredon Township	Sussex County	29
Green Township	Sussex County	20
Hamburg Borough	Sussex County	14
Hampton Township	Sussex County	44
Hardyston Township	Sussex County	18
Hopatcong Borough	Sussex County	93

Municipality	County	1987-99 Obligation
Lafayette Township	Sussex County	27
Montague Township	Sussex County	9
Newton Town	Sussex County	24
Ogdensburg Borough	Sussex County	13
Sandyston Township	Sussex County	13
Sparta Township	Sussex County	76
Stanhope Borough	Sussex County	15
Stillwater Township	Sussex County	15
Sussex Borough	Sussex County	0
Vernon Township	Sussex County	60
Walpack Township	Sussex County	0
Wantage Township	Sussex County	35
TOTAL SUSSEX		658
Berkeley Heights Township	Union County	183
Clark Township	Union County	92
Cranford Township	Union County	148
Elizabeth City	Union County	0
Fanwood Borough	Union County	45

Municipality	County	1987-99 Obligation
Garwood Borough	Union County	19
Hillside Township	Union County	0
Kenilworth Borough	Union County	83
Linden City	Union County	209
Mountainside Borough	Union County	123
New Providence Borough	Union County	135
Plainfield City	Union County	0
Rahway City	Union County	70
Roselle Borough	Union County	0
Roselle Park Borough	Union County	0
Scotch Plains Township	Union County	182
Springfield Township	Union County	135
Summit City	Union County	171
Union Township	Union County	233
Westfield Town	Union County	139
Winfield Township	Union County	0
TOTAL UNION		1,967
Allamuchy Township	Warren County	13

Municipality	County	1987-99 Obligation
Alpha Borough	Warren County	13
Belvidere Town	Warren County	0
Blairstown Township	Warren County	12
Franklin Township	Warren County	11
Frelinghuysen Township	Warren County	6
Greenwich Township	Warren County	41
Hackettstown Town	Warren County	62
Hardwick Township	Warren County	6
Harmony Township	Warren County	47
Hope Township	Warren County	8
Independence Township	Warren County	10
Knowlton Township	Warren County	14
Liberty Township	Warren County	7
Lopatcong Township	Warren County	56
Mansfield Township	Warren County	3
Oxford Township	Warren County	2
Phillipsburg Town	Warren County	0
Pohatacong Township	Warren County	47

Municipality	County	1987-99 Obligation
Washington Borough	Warren County	0
Washington Township	Warren County	48
White Township	Warren County	16
TOTAL WARREN		422
TOTAL STATE		85,964

<1> According to the National Association of Realtors' mortgage calculator - and assuming households could put up to $ 10,000 toward their down-payment, had the state's average car payment ($ 447.00, reported by Edmunds Automotive Network) and credit card debt ($ 165.00, reported by PlasticEconomy.com), took out a loan at 6.375 percent (roughly the average commitment rate for 30-year, fixed rate loans in 2006 and 2007, according to Freddie Mac), and faced a 2.5 percent property tax rate (slightly below the average effective property tax rate for all New Jersey municipalities in 2004, reported by the New Jersey Division of Taxation) - a household earning $ 52,276 (the state median in 2000) could afford a $ 109,547 home. U.S. Census data from 2000 indicates that 19.5 percent of specified owner-occupied units were valued below $ 109,547.

<2> Spontaneous rehabilitations were not included in this methodology since, while units were likely brought up to code ("spontaneously rehabilitated") over the course of the study period, others likely fell out of compliance, and it was not possible to verify the number of properties doing either.

<3> If these negative figures were not zeroed out but kept as negative values, the Statewide Update Prior Round Need would be 86,956 and the regional subtotals as follows:

COAH Region		Updated Prior Round Need
1	Northeast	7,709
2	Northwest	5,371
3	West Central	16,135
4	East Central	31,331

COAH Region		Updated Prior Round Need
5	Southwest	16,035
6	South-Southwest	10,374

APPENDIX D

UCC USE GROUPS FOR PROJECTING AND IMPLEMENTING NON-RESIDENTIAL COMPONENTS OF GROWTH SHARE

A one in 16 non-residential ratio shall be used to determine the number of affordable units to be created for each new job created in a municipality. For every 16 new jobs created in a municipality, as measured by new or expanded non-residential construction, the municipality shall have the obligation to provide one affordable residential unit. New jobs created shall be based on the gross square footage of non-residential development and on the use group of the facility being constructed. Use groups are as defined by the International Building Code (IBC) which has been incorporated by reference into the Uniform Construction Code (UCC). The following chart shall be used to project and implement the non-residential component of growth share:

Use Group	Description	Square Feet Generating One Affordable Unit	Jobs Per 1,000 Square Feet
B	Office buildings. Places where business transactions of all kinds occur. Includes banks, corporate offices, government offices, professional offices, car showrooms and outpatient clinics.	5,714	2.8
M	Mercantile uses. Buildings used to display and sell products. Includes retail stores, strip malls, shops and gas stations.	9,412	1.7
F	Factories where people make, process, or assemble products. Includes automobile manufacturers, electric power plants,	13,333	1.2

Use Group	Description	Square Feet Generating One Affordable Unit	Jobs Per 1,000 Square Feet
	foundries, and incinerators. F use group includes F1 and F2.		
S	Storage uses. Includes warehouses, lumberyards, and aircraft hangers but excludes parking garages. S group includes S1 and S2.	10,667	1.5
H	High Hazard manufacturing, processing, generation and storage uses. H group includes H1, H2, H3, H4 and H5.	10,000	1.6
A1	Assembly uses including theaters, concert halls and TV studios.	10,000	1.6
A2	Assembly uses including casinos, night clubs, restaurants and taverns.	5,000	3.2
A3	Assembly uses including libraries, lecture halls, arcades, galleries, bowling alleys, funeral parlors, gymnasiums and museums but excluding houses of worship.	10,000	1.6
A4	Assembly uses including arenas, skating rinks and pools.	4,706	3.4
A5	Assembly uses including bleachers, grandstands, amusement park structures and stadiums	6,154	2.6
E	Schools K - 12	Exclude	Exclude

Use Group	Description	Square Feet Generating One Affordable Unit	Jobs Per 1,000 Square Feet
Various	Institutions of higher education	Exclude	Exclude
I	Institutional uses such as hospitals, nursing homes, assisted living facilities and jails. I group includes I1, I2, I3 and I4.	6,154	2.6
R1	Hotels and motels	9,412	1.7
U	Miscellaneous uses. Fences tanks, barns, agricultural buildings, sheds, greenhouses, etc.	Exclude	Exclude

In the case of mixed-use development, the jobs calculation will be assigned in proportion to the square footage of each use in the mixed use development.

For example, if a municipality issues a certificate of occupancy for a 10,000 square foot restaurant (use group A2), the affordable housing obligation would be 10,000/5,000 or two affordable units. Alternatively, the affordable housing obligation for this same development could be calculated by applying a ratio of one unit for each 16 jobs created as follows: 10,000/1,000 x 3.2/16 = 2.

APPENDIX E

CRITERIA FOR POST-1986 CREDITS

In order to be eligible as a post-1986 credit, as referenced in N.J.A.C. 5:94-4.3, affordable housing developments and units must meet the following criteria:

Distribution of low and moderate income units:

With the exception of inclusionary developments constructed pursuant to the four percent low income tax credit regulations pursuant to the Internal Revenue Code Section 42h, at least half of all affordable units within each affordable housing development are affordable to low income households.

With the exception of inclusionary developments constructed pursuant to the four percent low income tax credit regulations pursuant to the Internal Revenue Code Section 42h, at least one-third of all affordable units in each bedroom distribution (pursuant to below) are affordable to low income households.

Bedroom distribution for affordable housing developments that are not age-restricted:

The combination of efficiency and one bedroom units is at least 10 percent and no greater than 20 percent of the total low and moderate income units.

At least 30 percent of all low and moderate income units are two-bedroom units.

At least 20 percent of all low and moderate income units are three-bedroom units.

Bedroom distribution for affordable housing developments that are age-restricted:

The number of bedrooms equals the number of age restricted low and moderate income units within the inclusionary development. The standard can be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

Rents and prices of affordable units:

The following criteria was used to determine the initial maximum rents and sale prices of affordable units:

1. Efficiency units are affordable to one-person households;

2. One-bedroom units are affordable to 1.5 person households;

3. Two-bedroom units are affordable to three person households; and

4. Three-bedroom units are affordable to 4.5 person households.

The initial price of a low- and moderate-income owner-occupied single family housing unit was established so that after a down payment of five percent, the monthly principal, interest, homeowner and private mortgage insurances, property taxes (property taxes shall be based on the restricted value of low and moderate income units) and condominium or homeowner fees did not exceed 28 percent of the eligible gross monthly income. The master deeds of inclusionary developments regulating condominium or homeowner association established fees or special assessments of low and moderate income purchasers at a specific percentage of those paid by market purchasers. The percentage that shall be paid by low and moderate income purchasers is at least one-third of the condominium or homeowner association fees paid by market purchasers. Once established within the master deed, the percentage shall not be amended without prior approval from the Council.

Gross rents of affordable units, including an allowance for utilities, was established so as not to exceed 30 percent of the gross monthly income of the appropriate household size. Those tenant-paid utilities that are included in the utility allowance are so stated in the lease. The allowance for utilities shall be consistent with the utility allowance approved by HUD for use in New Jersey. Any increases in rents and sales prices did not exceed the annual maximums permitted

by COAH's regulations.

Affordability Average

For affordable housing developments constructed before January 1, 2001, the initial maximum average rent or price of low and moderate income units within each development was affordable to households earning 57.5 percent of median income. The moderate income sales units were available for at least three different prices and low income sales units were available for at least two different prices. For rental units, there must have been one rent for a low income unit and one rent for a moderate income unit for each bedroom distribution.

For affordable housing developments constructed on or after January 2, 2001 the initial maximum rents of low and moderate-income units within each development were affordable to households earning no more than 60 percent of median income. In averaging an affordability range of 52 percent for rental units, there must have been one rent for a low-income unit and one rent for a moderate-income unit for each bedroom distribution. The initial maximum sales prices of low and moderate income units within each development were affordable to households earning no more than 70 percent of median income. In averaging an affordability range of 55 percent for sales units, the moderate income sales units were available for at least two different prices and low income sales units were available for at least two different prices.

APPENDIX F

CONSULTANT REPORTS

COUNCIL ON AFFORDABLE HOUSING (COAH)

CONTENTS

Analysis of Vacant Land in New Jersey And Its Capacity to Support Future Growth

Prepared by

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For
The Council on Affordable Housing
Department of Community Affairs
State of New Jersey

Final Report
December 31, 2007

Table of Contents

Appendix B - Spatial Data List

Appendix C - COAH Regions, Counties

1.0 Introduction

The National Center for Neighborhood & Brownfields Redevelopment (the Center) was requested by the New Jersey Council on Affordable Housing (COAH) to:

-- Prepare a comprehensive analysis of vacant available land in the State of New Jersey;

-- Estimate the capacity of that land to support future residential and non-residential development; and

-- Estimate the amount of redevelopment that would occur statewide in the future.

These tasks are part of a larger project encompassing the analysis and revision of COAH's proposed Third Round Affordable Housing Rules, which is being led by the Penn Institute for Urban Research and Wharton GIS Lab at the University of Pennsylvania (U. Penn Team). The results produced by the Center will be used for three primary purposes:

-- To determine if there is sufficient vacant land and remaining development capacity to support the State's projections of growth in households and employment out to at least the year 2018;

-- To determine if there is sufficient vacant land and remaining development capacity in growth areas of the State as a whole and in each of the COAH Regions, to support the use of a growth-share methodology and growth-share ratios for distributing affordable housing needs; and,

-- To provide an estimated upper ceiling or limit on the amount of household and employment growth that each of the 566 municipalities in the State will be able to absorb before it becomes fully developed.

1.1 Revisions and Expansion of Project Scope

A Draft Report was submitted to COAH by the Center on October 5, 2007, and was reviewed and made public by the COAH Board on October 10th. Written comments and questions were subsequently received by COAH from several interested stakeholder groups, and the Center participated in discussions of the report and related issues with representatives of COAH and these interested stakeholders. In response, COAH requested the Center to revise and expand its vacant land and development capacity analysis to include the Flood Hazard Area Control Act Rules which were adopted by the Department of Environmental Protection subsequent to the issuance of the Draft Report, on November 5th. These Rules restrict development of lands located in flood hazard and riparian zones of regulated waters, as described in N.J.A.C. 7:13-3 and 4.

The Center was also asked to comment on the potential long-term impacts of: 1) the DEP's proposed amendments to the State's Water Quality Management Planning Act Rules, as published in the New Jersey Register on May 21, 2007; and 2) the Highlands Regional Master Plan - Draft Final and supporting technical information issued on November 30, 2007.

2.0 Regional Planning Areas

The State of New Jersey is divided into different planning, environmental and regional governing areas that are

regulated or guided by rules established by the Office of Smart Growth (OSG) and State Planning Commission, Department of Environmental Protection (DEP), Meadowlands Commission, Highlands Council and Pinelands Commission. Some are statewide while others are regional in nature, and they often overlap one another, sometimes dissecting municipalities into multiple parts with different rules for determining what lands are vacant and available for future development, the types of development permitted and the densities at which development should occur. In an effort to take all of these variables into proper consideration, the Center utilized the following resources in developing its analysis of vacant land and the capacity of that land to support future growth:

-- Meadowlands, Highlands and Pinelands - These three regional planning organizations govern the use of about 1.4 million acres of land (the Highlands Council shares authority over the Preservation Area with the DEP), and use different definitions and methods for determining vacant land, buildable area, land uses and development densities. The Center worked closely with each organization to calculate vacant land and development capacity in a manner that was consistent with their land use rules and regulations.

-- Draft State Plan and State Plan Policy Map - The State Development and Redevelopment Plan divides the State into planning areas that share common conditions with regard to development and environmental features, and identifies:

[#9702] Areas for Growth - Metropolitan (PA-1), Suburban (PA-2) and Designated Centers

[#9702] Areas for Limited Growth: Fringe (PA-3), Rural (PA-4), and Environmentally Sensitive (PA-5)

[#9702] Areas for Conservation: Fringe (PA-3), Rural (PA-4), and Environmentally Sensitive (PA-5)

The Center used residential densities consistent with the objectives of the State Plan and market trends to calculate the capacity of vacant lands outside of the Meadowlands, Highlands Preservation Area and the Pinelands to support future growth.

-- Sewer Service Area - DEP spatial data was used to identify vacant lands within existing sewer service areas, and those that were not. The Center used residential densities consistent with the objectives of the State Plan and market trends to calculate the capacity of vacant lands located within a sewer service area (SSA), and used septic densities provided by the DEP at the watershed level to calculate the capacity of lands located outside of an SSA. Proposed Water Quality Management Planning (WQMP) Rule amendments would remove some environmentally sensitive lands from current sewer service areas and require that development outside of SSAs be at new lower septic supported densities. The amendments would also make it more difficult to expand centralized wastewater treatment facilities that are discharging into impaired waters. It is unclear if, what form and when these amendments may be adopted, and therefore are not considered to be constraints when estimating the development capacity of vacant lands in this analysis.

3.0 Vacant Land Analysis

Vacant land is defined as those lands which are undeveloped and not environmentally or otherwise constrained from future development, based on current State or regional agency regulations and policies. The Center divided the State into five geographic and regional units in order to recognize differences in regulatory and policy land use constraints imposed by the three regional planning agencies versus other areas of the State, as well as the availability and use of data sources of differing quality and detail:

-- Meadowlands

-- Pinelands

-- Highlands Planning Area

-- Highlands Preservation Area

-- Rest of State

The most current version (Version 3 - June 2007) of the Draft State Plan Policy Map was provided by OSG and used to delineate State Planning Areas and the boundaries of the Meadowlands and Pinelands. The Highlands boundaries were downloaded from its web site. The three regional areas were extracted from the LU/LC base map and addressed separately as described in this report. A number of municipalities partly located in the Meadowlands and Pinelands were split into two parts, and vacant land was computed separately for each section based on rules appropriate to that area.

A number of other spatial layers were overlaid on the resulting data so that each vacant land spatial polygon created had attributes which allowed the results to be condensed and summarized by:

-- Municipality (1980 FIPS Code)

-- County

-- COAH region

-- Type of Community (Urban, Suburban Exurban and Rural based a methodology developed by the Center for Urban Policy Research at Rutgers University)

-- State Planning Area

-- Designated Center

-- Sewer Service Area (NJDPES Permit number if available)

All of the Center's spatial analysis and calculation of vacant land was replicated independently by the Wharton GIS Lab at the University of Pennsylvania, and any discrepancies were resolved and corrected. In addition, the vacant land estimates for the Meadowlands, Pinelands and Highlands were provided to these agencies for review, and corrections and adjustments were made where applicable.

Although the data used in this analysis is the most current and accurate available, and the methodology for estimating vacant land was the most thorough and appropriate, there may be differences at the municipal or community level when compared to local on-the-ground knowledge of individual land parcels.

3.1 Rest of State

A number of studies of vacant land at the municipal, county, regional and state level have been conducted in recent years by different organizations using differing methodologies and spatial data sets. The Center felt that it was critical for COAH to use the most current and accurate spatial data available, and that it use a set of assumptions and methodologies that were supported by the State's Office of Smart Growth (OSG) and Department of Environmental Protection (DEP). To this end a meeting was held in May 2007 with representatives from OSG, DEP, COAH, the Center and the U Penn Team, to discuss what data was available and how it should be used to produce the most accurate estimate of vacant land under current State regulation and land use policies.

It was agreed that vacant land outside of the New Jersey Highlands, Pinelands and Meadowlands ("Rest of State") would be calculated by the Center using spatial files made available by OSG, DEP and the NJ Department of

Agriculture. The DEP's 2002 LU/LC spatial file would be used as the base file, and the following spatial data would be removed/subtracted from it to obtain vacant lands available for future development (see Appendix A for LU/LC Dictionary and Appendix B for list of spatial files):

1. All lands within the legislated boundary lines of the New Jersey Highlands, Pinelands and Meadowlands;

2. Lands already developed (IDs 1 - 5 in Dictionary);

3. Undeveloped-Unavailable Lands (IDs 10 & 11);

4. Undeveloped Wetlands (ID 9);

5. Public open space, parks, etc. (from OSG);

6. Private open space (from OSG);

7. Preserved farmlands (from NJ Department of Agriculture);

8. Buffers around C-1 streams (calculated by Center);

9. Developed areas within LU/LC code 1700 (from DEP); and

10. Upper Wetlands Boundary/Upper Wetlands Limit (from DEP).

The lands that were removed in this process included those that were already developed; waters and wetlands where development is either not permitted or highly restricted under current DEP rules, including 300 foot buffers around all Category One streams and their primary tributaries; parks, and privately and publicly acquired lands for open space or land conservancy purposes; preserved farmlands; and other lands deemed by DEP to be unavailable for development pursuant to current environmental rules and regulations.

3.1.1 Flood Hazard Area Constraints

In this revised analysis, the Center expanded the above list of constrained lands to remove flood plains and riparian zones described in the Flood Hazard Area Control Act Rule that was adopted on November 5, 2007. The flood hazard and floodway areas are based on a spatial database compiled by DEP using FEMA Flood Insurance Rate Maps (FIRM) covering the State's counties and municipalities as of 1996. These maps identify land areas that are subject to flooding at least every 100 years. The statewide database was developed through the merger of about two thousand individual spatial files, and as such they may not perfectly edge-match or exactly follow the more accurate 2002 LU/LC digital imagery. However, DEP and the Center believe that this data is a reasonable surrogate for flood-prone areas as per the FEMA definitions on a macro statewide scale.

The Flood Hazard Area Control Act Rules severely limit, but do not prevent new construction or redevelopment of existing structures in the floodplain. Construction outside the floodway and projects that are not a major development, as defined at N.J.A.C. 7:8- 1.2, and therefore not subject to the requirements of the Stormwater Management rules at N.J.A.C. 7:8 may be permitted. However, these exceptions are granted on a case by case basis. In addition, the costs associated with pursuing such a permit may create a deterrent to development in itself. To present the most conservative vacant land and capacity results, the Center assumed that no construction would occur within these floodplain areas.

Under the new Rules, development in riparian areas along regulated waters is severely restricted. Buffers of different sizes are required on all streams according to their designated uses consistent with the State's Surface Water Quality

Standards (SWQS). The riparian zone along both sides of a Category One stream and its upstream tributaries is 300 feet, and was included as a constraint under previously adopted rules. The riparian zone along waters (and their upstream tributaries) deemed to be trout production or maintenance waters; any segment of water flowing through an area containing habitat of threatened or endangered species, and considered to be critical to their survival; and waters flowing through an area containing acid producing soils is 150 feet. The riparian zone along all other streams is 50 feet.

The DEP's Water Monitoring and Standards program has coded in the current SWQS data list onto a draft copy of the new 2002 stream network. The 2002 streams were delineated off the 2002 LU/LC imagery and show streams down to less than 10 ft in length. The spatial data layer provided by DEP for this analysis reflects the stream classifications and antidegradation designations adopted as of October 16, 2006. The data is in draft form, currently under review, and is expected to be released to the public in early 2008. The Center constructed buffers along all such streams consistent with the riparian zone definitions using this DEP stream classification data.

In addition, the new Rule regulates the 150 foot transition areas required along freshwater wetlands of extraordinary resource value and 50 foot area along wetlands of intermediate resource value stipulated in the State's Freshwater Wetlands Protection Act (N.J.A.C. 7:7A). The Center was unable to locate or obtain any database that classifies the State's numerous wetlands into these resource value categories. After discussions with DEP, it was decided that a 100 foot buffer would be created by the Center along the boundaries of all unmodified and unaltered freshwater wetlands (LU2002_codes 6210 through 6500 listed under ID #9, Appendix A) as a surrogate in this analysis.

3.1.2 Net Vacant Land

It was determined in this revised analysis that there are 690,680 acres of undeveloped and unconstrained vacant land outside of the three regions.

3.2 Meadowlands

The New Jersey Meadowlands Commission has a comprehensive and up-to-date spatial database of the entire District which identifies developed, constrained and vacant land at the individual parcel level. A detailed review of this spatial database by Meadowlands Planning staff indicated that several undeveloped parcels are right-of-ways, roads, water or otherwise not vacant. After these adjustments and consideration of the new Flood Hazard Area rule, it was determined that there are only 224 acres of vacant buildable land remaining in the Meadowlands.

3.3 Pinelands

The New Jersey Pinelands Commission has an extensive spatial database that supports its Comprehensive Management Plan Land Capability Map, including parcel level detail on constrained and federal owned lands. However, it does not specifically identify vacant lands. The Center therefore used the same Rest of State methodology and data sources to create an initial spatial analysis and map for the Pinelands planning staff to review and compare with their own in-house studies.

Three differences between the Center's and Pinelands' results were found. The first was resolved by the Pinelands providing more extensive open space and constrained land information than was contained in the DEP data that had been made available to the Center. This included lands subject to the Coastal Area Facilities Review Act (CAFRA) regulation. The second was resolved by reclassifying a U.S. Air Force site from undeveloped to developed land, and the Pinelands staff providing spatial data for all federal lands in the District. The third was a difference in the treatment of LU/LC Code 1700 (Other Urban or Built-Up Land). Because the DEP had manually reviewed all major parcels in this category and removed any that were believed to be developed, the Center chose to leave the balance of such lands classified as undeveloped and thus vacant.

In this revised analysis, the Center removed additional lands constrained under the recently adopted Flood Hazard Area Control Act (see Sections 3.1.1 above). After these adjustments it was determined that the Pinelands has 220,930 acres of undeveloped and unconstrained vacant land.

3.4 New Jersey Highlands Planning Area

The Highlands Water Protection and Planning Act divided the Highlands Region into the Planning Area and the Preservation Area. Although it gave overall planning authority for the Region to the Highlands Council, determination of where and under what conditions future development could occur in the Preservation Area was delegated to the DEP. These restrictions will be included in the Highlands Regional Management Plan which is expected to be adopted in early 2008 and submitted to the State Planning Commission for endorsement later the same year. With concurrence from DEP, the Highlands Council and COAH, the Highlands were divided into the two regional areas for purposes of determining vacant land. A number of towns were split into two parts, and vacant land was computed separately for each section based on rules appropriate to the Planning and Preservation Areas.

The Highlands Council issued a Regional Master Plan - Final Draft and supporting technical information on November 30, 2007. The Plan imposes restrictions on development in buffered areas around all streams, wetlands and other critical resource areas, as well as in areas with slopes of 15 percent or greater, agricultural, and forested lands in the Planning Area. It also strengthens the previously adopted DEP restrictions on land use in the Preservation Area. Within 60 days of its adoption, the Plan must be submitted to the State Planning Commission for endorsement. Although many of the Planning Area provisions are voluntary until each municipality applies for and obtains Plan Conformance, endorsement of the Regional Management Plan by the State will give the Highlands Council authority to restrict development in its Protection Zone and three sub-Zones (Existing Community-Environmentally Constrained, Conservation-Environmentally Constrained, and Lake Community). In total, these land use categories represent about 75% of the Highlands total land area.

The Center used the Rest of State vacant land methodology and data sources to create an initial spatial analysis of vacant land for the Planning Area. It then subtracted or removed a hydrology layer of stream buffers, using a downloaded copy of the *Highlands Open Waters Protection Area* spatial file from the Highlands web site, and a steep slopes layer, using a downloaded copy of the *Slope Greater Than 15 Percent, Undeveloped* spatial file on the same web site, to create a final vacant land spatial file. It was determined that the *Highlands Open Waters Protection Area* spatial layer already represents those lands constrained under the recently adopted Flood Hazard Area Control Act.

The Regional Master Plan - Final Draft's provisions include further land use restrictions in the Planning Area. It will also use a more conservative nitrate dilution factor than the proposed DEP Wastewater Management Rules to determine the minimum lot size for septic systems, and not allow any use of buffers or wetlands for drainage as provided under the proposed DEP Rules. Although these land use restrictions will further impact the long-term residential and non-residential development capacity of the Highlands area, they will not significantly impact COAH's 2018 growth estimates. Most of these communities are expected to experience a low level of growth, and will not approach the development capacities on the currently estimated 110,237 acres of vacant land in the Planning Area over the next 10 years. The four counties having the greatest land areas within the Highlands - Morris, Passaic, Hunterdon and Warren - have an aggregate estimated residential development capacity that is more than three times the Department of Labor's projected 2002-2018 growth of 49,019 residential housing units.

3.5 New Jersey Highlands Preservation Area

As noted above, the DEP was tasked with developing stringent water and natural resource protection standards, policies and regulation that would be used to govern future development in the Highlands Preservation Area. The rules are quite complex, but generally provide exemptions for the construction of a single family home on a lot that existed at the time the Act was enacted in 2004. The ability to construct more than one residential unit on a subdivided parcel is however

severely restricted and is very closely linked to having sufficient unconstrained vacant land available for construction of the proposed buildings.

With assistance from DEP and Highlands' staff, the Center developed an unconstrained vacant land spatial file containing a total of 14,707 acres. The initial process followed the Rest of State methodology described earlier. Next, the following spatial data was subtracted/removed to arrive at vacant available land in the Preservation Area:

-- Slopes of 10 percent or greater (downloaded from Highlands web site)

-- Buffers on all Highlands Preservation Area waters including wetlands (downloaded from Highlands web site)

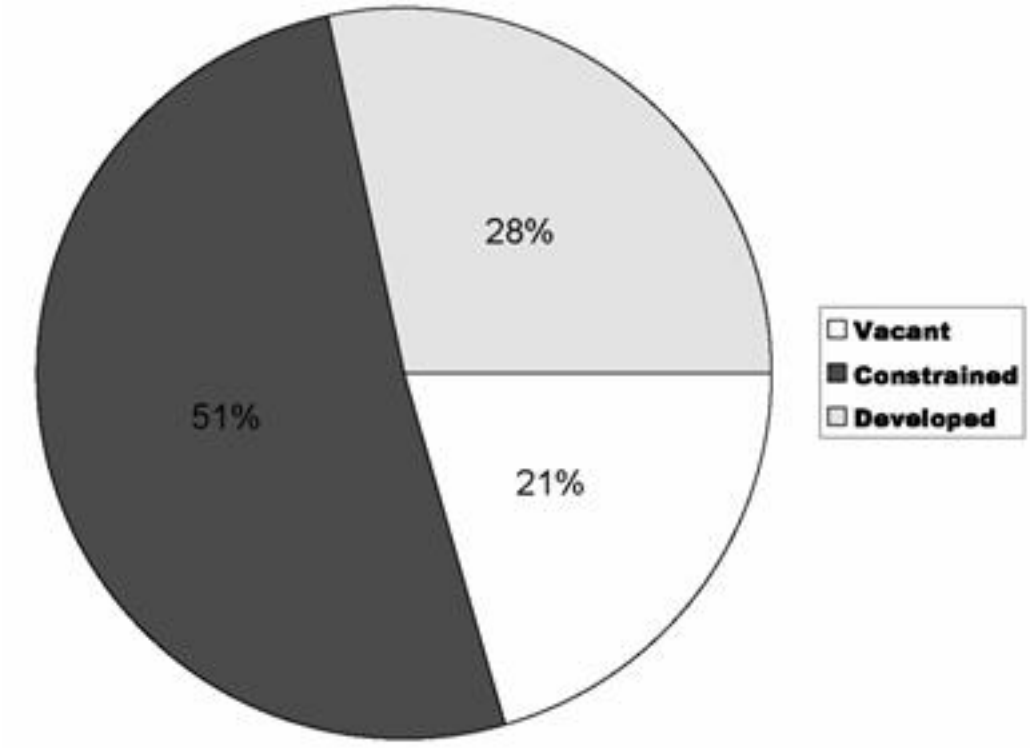
-- National Heritage Priority sites for rare plant species and ecological communities (downloaded from DEP web site)

-- DEP Landscape data (Corrected Version 3) for Ranks 2 through 5 (from DEP)

The Landscape data represents habitat for threatened and endangered species, ranks 2-5, consistent with DEP Highlands Preservation rules, and is in Draft form. A Final data set is expected to be made available to the public early in 2008.

3.6 Vacant Land Results

Combining the data and results of these studies show that out of the State's approximate 4.98 million acre total area, about 1.42 million acres (28%) are already developed and 2.54 million acres (51%) are made up of water, wetlands, open space, parks, preserved farms, and other constrained lands. Approximately 1.03 million acres of vacant land are available for future residential and non-residential development.



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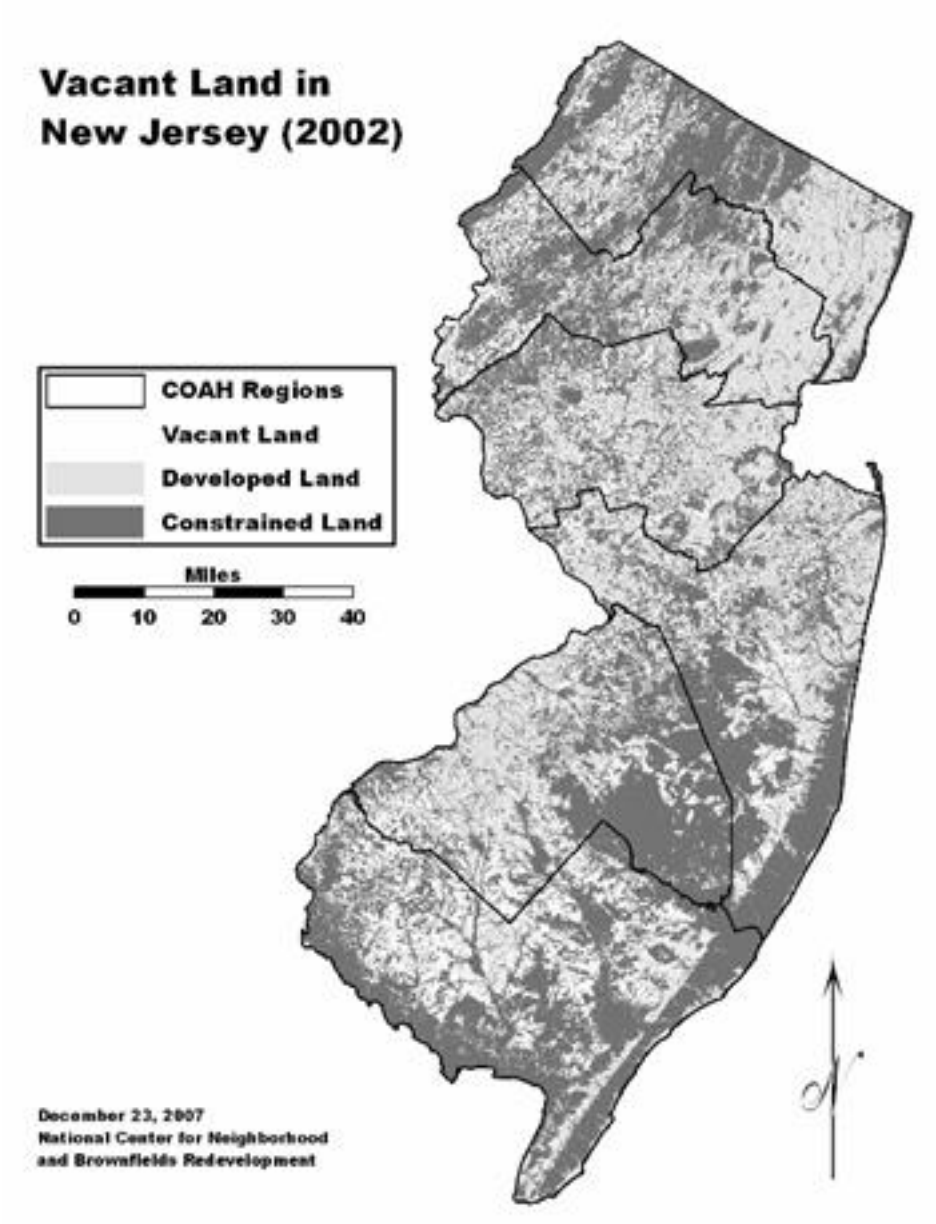
Developed lands stretch from the northeast part of the state and the large New York metropolitan area, southward through Trenton to the Camden and Philadelphia metropolitan area. Large areas of constrained lands are located in the Highlands and Pinelands.



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A large proportion of the vacant land available for future development is thus located in less developed and lower density areas in the central areas of the state (COAH Regions 3 and 4), and even more so in the south (Regions 5 and 6):

-- Region 1 - 98,496 acres

-- Region 2 - 105,952 acres

-- Region 3 - 161,245 acres

-- Region 4 - 171,956 acres

-- Region 5 - 190,945 acres

-- Region 6 - 300,108 acres

A total of 19 municipalities have no remaining vacant land.

4.0 Land Capacity Analysis

Having identified and quantified the amount of vacant land in the State, the next step was to estimate the capacity of that land to support future residential and non-residential development. Capacity is defined as the maximum number of residential dwelling units and non-residential floor space that can be built on the available land, based on assumptions of how the land might be used in terms of type and density. These estimates will be used for three primary purposes:

-- To determine if there is sufficient development capacity to support the State's projections of growth in households and employment out to at least the year 2018;

-- To determine if there is sufficient vacant land and remaining development capacity in growth areas of the State as a whole and in each of the COAH Regions, to support the use of a growth-share methodology and growth-share ratios for distributing affordable housing needs; and,

-- To provide an estimated upper ceiling or limit on the amount of household and employment growth that each of the 566 municipalities in the State will be able to absorb before it becomes fully developed.

One of the objectives of this analysis was to fully consider changes in land use policies and practices that have occurred since Round Two and which are currently being pursued by OSG and/or DEP. These include the goal of reducing future growth in State Planning Areas considered to be environmentally sensitive or better used for agricultural purposes, and seeking greater utilization of available lands in urban and suburban locations that have supporting infrastructure. The establishment of the Highlands Region and special designation of a Preservation Area, and the DEP's recently proposed wastewater and water quality management rules underscore the importance of these efforts.

As before, the Center divided the State into five geographic or regional land use units in order to recognize differences in regulatory and policy land use constraints imposed by the three regional planning agencies versus other areas of the State, as well as the availability and use of data sources of differing quality and detail. Individual buildout models were then created for each, except the Meadowlands which was able to provide a more detailed analysis of its 224 acres based on individual parcel data and local zoning.

4.1 Rest of State

A buildout model was created for the Rest of State that took into consideration variations in the type and size of communities, existing and future land uses, and development densities based on existing conditions, State Planning Area location and access to wastewater treatment systems.

4.1.1 Residential Density Matrix

The 1.03 million acres of vacant land in the state is made up of widely different types and size communities. Existing residential and employment densities vary considerably from municipality to municipality, and region to region, and future growth will be impacted by the location of available lands in different State Planning Areas and access to wastewater treatment systems. To address these variations, the Center constructed a residential density matrix that divided the State into its six COAH Regions and each of these into five land use categories based on State Planning Area, sewer service area and community type.

-- Type 1 - Located in Planning Area 1 (Metropolitan) and classified as Urban by the Center for Urban Policy Research (CUPR).

-- Type 2 - Located in Planning Area 1 and classified as Suburban by CUPR.

-- Type 3 - All other communities located in Planning Area 1.

-- Type 4 - Located in Planning Area 2 (Suburban), a Designated Center or within a sewer service area.

-- Type 5 - All other communities (those located in Planning Areas 3, 4, 4b and 5 that are not within a sewer service area or listed as a Designated Center).

State Planning Area 1 represents areas of the state that have experienced the most intense development, and includes some of New Jersey's oldest and established population centers. But it also encompasses the largest urban cities like Newark, Elizabeth, Trenton and Camden, as well as many smaller suburban and more rural areas ranging from Englewood, Voorhees and Millburn to Phillipsburg, Bridgeton and Millville. Rather than lumping them all in one basket, the Center divided them into three groups according to their CUPR classifications. The fourth category encompasses lands located in Planning Area 2 and Designated Centers. These areas are less intensely developed, have more dispersed and fragmented patterns of development, and are more likely to have land available for development. The Center expanded this category to also include areas outside PA-1 and PA-2 that are within a sewer service area, and thus have the infrastructure to support additional growth. Together these four categories represent the State's potential growth areas.

The fifth category encompasses all other lands, and thus those areas that are constrained in their development capacity because they are generally dependent on having sufficient land to support on-site septic treatment systems.

Using the DEP's 2002 LU/LC data for residential developed land and 2000 U.S. Census household data at the Census Tract level, the Center calculated an estimated average residential density for each Census Tract. That data was then used to calculate a weighted average current residential density for each municipality. The latest spatial versions of the State Plan Policy Map and DEP sewer service area map were overlaid on the municipal spatial and density data, and each resulting data record was then assigned to one of the first four land use categories based on the above criteria. This data was then used to calculate a median residential density for each of these four categories of land use located within each of the six COAH Regions.

	Land Use Category (DUs per Acre)			
COAH Region	1	2	3	4
1	19.19	6.28	1.99	1.35
2	15.53	4.75	2.33	2.27

	Land Use Category (DUs per Acre)			
COAH Region	1	2	3	4
3	13.84	5.52	1.89	1.69
4	15.31	4.07	1.94	2.32
5	15.28	4.61	2.79	2.30
6	22.73	3.68	2.04	1.87

As expected, the median densities varied by geography (COAH Regions) and community type (categories 1-3 within PA-1). There was less difference between categories 3 and 4. A review of average land use densities in each of these 24 growth areas often showed large variances between the most and least densely developed areas. After conferring with COAH and the U Penn Team, the Center adopted a methodology that assumed that future development on each category of vacant land would occur at the higher of the municipality's current average density or the median density of residentially developed lands in similar municipalities within the same COAH Region. This is consistent with studies which show that densities are stabilizing or declining in areas that are already dense, and increasing in other areas as land values rise.

In addition, a caveat was added that no new development would occur at densities more than 25 percent higher than the municipality's current average density. This minimum requirement is consistent with an analysis of data from the American Housing Survey for the United States (AHS) from 1995 and 2001 that indicates that the median lot size for all residential units (both occupied and vacant) declined by 26 percent over this time period. Although the AHS data is not available at a state level, the U Penn team believes that the results are representative of land use and density trends in New Jersey.

All category 5 vacant lands (those located in Planning Areas 3, 4, 4b and 5 that are not within a sewer service area or listed as a Designated Center) are subject to DEP regulations related to the use of on-site (septic) wastewater treatment systems. Current rules use a NO[3] concentration target of 5.2 mg/L to prevent water quality degradation, and DEP has used this limit to estimate the amount of land required for a typical house in different areas of the State. This calculation is based on a regional HUC 11-based application of the Department's GSR-32 groundwater recharge methodology, combined with the Trela-Douglas nitrate-dilution model. A spatial file with septic density parameters by watershed area was provided to the Center and used to calculate buildout on category 5 vacant lands.

New wastewater management and water quality management rules have been proposed by DEP which would reduce this nitrate standard to 2.0 mg/L in the future, however greater flexibility would be provided in the possible use of wetlands, riparian buffers and other environmentally sensitive lands for septic drainage purposes. This proposed change in septic densities was not used in computing development capacity for this analysis.

4.1.2 Non-Residential Densities

The amount of employment generated by commercial, industrial, retail and other non-residential properties varies widely across the state because of differences in floor area ratios (FARs) and the type and use of the building constructed. There is no Census Tract or other spatial data set that would provide an accurate estimation of current non-res space or associated densities at the municipal level that might be used to estimate future non-residential land capacity. Nor does the Center have access to municipal zoning and parcel level data.

After conferring with COAH, DEP and the U Penn Team, the Center adopted a methodology to generate a non-residential density for each municipality that is reflective of and a direct function of its residential density. Current and proposed State wastewater management (WWM) and water quality management (WQM) rules provide a mechanism and guidelines for equating residential housing units to non-residential floor area. The proposed WWM rule assumes that an average residential unit generates 500 gallons per day of wastewater effluent. N.J.A.C. 7:9A recommends a default value for non-residential facilities located outside of a sewer service area of 0.125 gallons per day per square foot. Thus, 4,000 sq. ft. of non-residential space on build type 5 vacant land areas produces the same amount of wastewater effluent as an average house. N.J.A.C. 7:14A recommends a default value for non-residential facilities located within a sewer service area of 0.100 gallons per day per square foot. Thus, 5,000 sq. ft. of non-residential space on build types 1-4 vacant land areas produces the same amount of wastewater effluent as an average house. This methodology of linking residential and non-residential densities through the use of wastewater flows is very similar to that used by the Pinelands Commission in its planning studies.

Using these conversion factors, an urban type community having a 20 DU per acre residential density would be given a 100,000 sq. ft. per acre non-residential density, or an FAR of about 2.3. A rural community having a residential density of 1 DU per 4 acres would have a non-residential density of 1,000 sq. ft. per acre.

These conversion factors were multiplied times the municipal residential density determined through the process described in Section 4.1.1 above, to determine the appropriate non-residential density for each vacant land area.

4.1.3 Land Use Mix

In 2002, approximately 67 percent of the developed land in the State was being used for residential housing purposes and 15 percent for commercial, industrial and retail space. However, the proportions used for these purposes varied widely across the state. About 22 percent of municipalities had 80 percent or more devoted to housing. Approximately one-fifth of municipalities had less than 8 percent being used for commercial purposes, while 10 percent had 30 percent of their developed lands used for this purposes. The Center has no information to show that individual municipalities are planning to significantly change these mixes in land use.

In 2002, approximately 14 percent of developed land was identified as being used for athletic fields, transportation/utility right of ways, military, transitional and other purposes. These uses varied widely as well. The assumption used in estimating the maximum buildout potential of the available lands will be that 10 percent will be used for non-residential and non-commercial purposes. This is less than the current average rate, and assumes that Military and several other land uses in this category will decline, remain static or not increase on average above the 10 percent estimate. The remaining 90 percent will be divided according to existing relationships between residential and commercial uses at the individual municipal level.

4.1.4 Minimum Parcel Size

The step by step process of spatial overlays and removal of developed and constrained lands created thousands of individual non-contiguous polygons. Some were slivers created by overlaying spatial files that have slightly different municipal or parcel boundary lines, while others were much larger. This was further exacerbated by dividing the land area represented by these polygons into residential and non-residential records based on the land use mix explained in 4.1.3 above. The default built into the Center's Spatial Land Impact Model (SLIM) is to place at least one dwelling unit

on the residential portion and a commercial building on the non-residential portion of each record regardless of their size. This can cause a significant overstatement of buildout capacity if not refined.

The Center used two criteria to reduce this buildout error. The first compared the residential area size of each record to the minimum parcel size associated with its density. The minimum lot size was computed by taking the reciprocal of its DU per acre density (5 DUs per acre requires minimum 0.20 acres of land). For non-residential land a default minimum parcel size of 1,500 sq. ft. (30 ft. X 50 ft.) was used, since the permitted density takes into consideration multiple story buildings. The second focused on large lot low density areas (one acre or more per DU). In these areas a default value of one-half an acre was used in place of the default density. This method attempted to provide greater recognition that many of the split polygons are likely to be smaller than larger lot zoning areas might require, and that when contiguous steep slopes, wetlands and other environmental constraints are considered by the local planning board, that it may very well allow the parcel's development. Those land areas not meeting the minimum criteria was coded no build (NB) and the model ignored them in any buildout calculations.

4.1.5 Residential Buildout Results

The residential buildout was calculated for each polygon meeting the minimum residential parcel criteria, by multiplying its area in acres times the percent of residential land use associated with that municipality and the density (DUs per acre) assigned to that land use category. Results were rounded down to the nearest whole number before being combined with other results for the same build type in each municipality. A total of 752,804 new residential units could be constructed in areas outside of the three special regions.

4.1.6 Non-Residential Buildout Results

The non-residential buildout was computed for each polygon meeting the minimum non-residential parcel criteria, by multiplying its area in acres times the percent of non-residential land use associated with that municipality and the density (square feet per acre) assigned to that land use category. A total of approximately 1.02 million square feet of space could be constructed in areas outside of the three special regions.

4.2 New Jersey Meadowlands

The Meadowlands has only 224 acres of vacant buildable land split among a number of different type of parcels in the District, due to the large areas made up of wetlands and marshes, landfills, and commercial, industrial and entertainment facilities. Because of the small area involved, the Center asked the Commission's Planning Division to provide the Center with a detailed buildout analysis based on local zoning and knowledge of what development was actually being considered for many of the parcels. That analysis estimates that 308 residential units and 8.0 million square feet of non-residential floor space will be created in a full development of these lands. The Commission also provided an analysis that indicates that the redevelopment of former landfills and underutilized commercial, industrial and entertainment properties have the potential to create as many as 5,775 new residential units and 12.0 million square feet of new floor space.

4.3 New Jersey Pinelands

A buildout model was created for the Pinelands that took into consideration variations in the type and size of communities, existing and future land uses, development densities based on the Pinelands Comprehensive Management Plan and Land Capability Map, and location vis-a-vis sewer service areas.

4.3.1 Residential Densities

The Pinelands Comprehensive Management Plan established nine land use management areas with goals, objectives,

development intensities and permitted uses for each. The Center overlaid its Land Capability Map on the vacant land spatial file to identify available lands in five of the largest planning areas. The following recommended residential densities were then used to compute the residential buildout for each area:

-- *Preservation Area District* - 288,300 total acres: No residential development is permitted, except for one-1 acre lots in designated infill areas (total 2,072 acres). The Center allocated those 2,072 dwelling units across the municipalities within the Preservation District based on vacant land.

-- *Special Agricultural Production Area* - 40,300 total acres: Only residential farm-related housing is permitted at density of 1 DU per 40 acres.

-- *Forest Area* - 245,500 total acres: Only residential development is permitted at density of 1 DU per 28 acres.

-- *Agricultural Production Area* - 68,500 total acres: Farm related housing is permitted at density of 1 DU per 10 acres and non-farm related at 1 DU per 40 acres. Not knowing what proportion would be of each type in the future, the Center used the 1 DU per 28 acres density of the Forest Area for this area.

-- *Rural Development Area* - 112,500 total acres: Limited, low-density residential development is permitted at density of 1 DU per 5 acres.

In the Pinelands Villages, Towns and Regional Growth Area the Center used the 2002 LU/LC mix of residential versus non-residential land use to identify lands available for residential development. The average weighted residential density of each municipality was used to calculate buildout on these remaining lands, since the overall mission of the Pinelands Commission is to limit and not promote growth.

As with Rest of State, 10 percent of the vacant available land was set aside for athletic fields, transportation/utility right of ways, military, transitional and other purposes. Residential development was apportioned to the remaining lands as appropriate to the land use management area and described above.

4.3.2 Non-Residential Densities

The Pinelands Comprehensive Management Plan severely restricts where non-residential development can occur and in some instances what type of non-residential uses are permitted. Limited in-fill non-residential development is permitted in the Preservation Area District, none is permitted in the Special Agricultural Production and Forest Areas, and agricultural commercial and roadside retail are generally permitted in the Agricultural Production and Rural Development Areas.

The Center did not have access to parcel level data with which to determine what infill lots exist in the Preservation Area District that would permit non-residential development, so only residential development was considered in the buildout. In the two planning areas where some non-residential development was permitted, the Center assumed that 10 percent of net vacant available lands (after 10 percent allocation to athletic fields, etc. noted above) would be used for this purpose and the remaining 90 percent would be used for residential development.

In the Pinelands Villages, Towns and Regional Growth Area the Center used the 2002 LU/LC mix of residential versus non-residential land use to identify net lands available for non-residential development. The average weighted residential density of each municipality was then multiplied by 4,000 square feet per DU if located outside a sewer service area and by 5,000 square feet if within an SSA, for purposes of calculating non-residential buildout on these remaining lands.

4.3.3 Minimum Parcel Size

As with the Rest of State modeling process, the spatial overlays and removal of developed and constrained lands created hundreds of individual non-contiguous polygons. The default built into the model is to place at least one dwelling unit on the residential portion and a commercial building on the non-residential portion of each record regardless of their size. This can cause a significant overstatement of buildout if not refined. The Center used the same minimum parcel size criteria as with Rest of State to reduce the potential for buildout error.

4.3.4 Buildout Results

The residential buildout was calculated for each polygon meeting the minimum residential parcel criteria, by multiplying its area in acres times the percent of residential land use and density (DUs per acre) associated with that land use management area or municipality. Results were rounded down to the nearest whole number before being combined with other results for the same type in each municipality. A total of 64,772 new residential units could be constructed in the Pinelands.

The non-residential buildout was computed for each polygon meeting the minimum non-residential parcel criteria, by multiplying its area in acres times the percent of non-residential land use and density (square feet per acre) associated with that land use management area or municipality. Results were rounded down to the nearest whole number before being combined with other results for the same build type in each municipality. A total of approximately 60.2 million square feet of space could also be constructed in the Pinelands.

4.4 New Jersey Highlands Planning Area

As noted earlier, the Highlands Water Protection and Planning Act divided the Highlands Region into the Planning Area and the Preservation Area. With concurrence from DEP, the Highlands Council and COAH the Center also separated the two regional parts for purposes of determining the buildout capacity of their vacant and available land.

4.4.1 Residential Density Matrix

The 110,237 acres of vacant land located in the Highlands Planning Area is made up of widely different types and size communities, and some are located in both the Planning and Preservation Areas. Existing residential and employment densities vary considerably from municipality to municipality, and region to region, and future growth will be impacted by the location of available lands in different State Planning Areas, access to wastewater treatment systems, and changes that will occur as the Highlands Regional Management Plan is adopted and municipalities conform their land use and zoning densities to the Plan.

The vacant land analysis for the Planning Area removed lands located on steep slopes and in buffered areas around all streams, wetlands and other critical resource areas, and after conferring with Highlands and COAH staff it was agreed that the Rest of State residential density matrix that is based on State Planning Area, sewer service area and community type was a reasonable methodology for estimating the buildout capacity of these remaining lands.

4.4.2 Non-Residential Densities

As with the Rest of State, the Center adopted a methodology to generate a non-residential density for each municipality that is reflective of and a direct function of its residential density. Current and proposed State wastewater management (WWM) and water quality management (WQM) rules provide a mechanism and guidelines for equating residential housing units to non-residential floor area. The proposed WWM rule assumes that an average residential unit generates 500 gallons per day of wastewater effluent. N.J.A.C. 7:9A recommends a default value for non-residential facilities located outside of a sewer service area of 0.125 gallons per day per square foot. Thus, 4,000 sq. ft. of non-residential space on build type 5 vacant land areas produces the same amount of wastewater effluent as an average house.

N.J.A.C. 7:14A recommends a default value for non-residential facilities located within a sewer service area of 0.100 gallons per day per square foot. Thus, 5,000 sq. ft. of non-residential space on build types 1-4 vacant land areas produces the same amount of wastewater effluent as an average house.

These conversion factors were multiplied times the municipal residential density determined through the process described in Section 4.4.1 above, to determine the appropriate non-residential density for each vacant land area.

4.4.3 Land Use Mix

As noted earlier, there are wide variations between regions and municipalities in the percent of land developed for residential, non-residential and other purposes. The assumption used in estimating the maximum buildout potential of the available lands in the Highlands Planning Area, like Rest of State, is that 10 percent will be used for non-residential and non-commercial purposes. The remaining 90 percent was divided according to existing relationships between current residential and commercial uses at the individual municipal level.

4.4.4 Minimum Parcel Size

As with the Rest of State buildout process, the spatial overlays and removal of developed and constrained lands created hundreds of individual non-contiguous polygons. The default built into SLIM is to place a minimum of one dwelling unit on each residential land use polygon and a commercial building, regardless of size, on each non-residential polygon. The Center used the same minimum parcel size criteria as with Rest of State to reduce the potential for buildout error.

4.4.5 Residential Buildout Results

The residential buildout was calculated for each polygon meeting the minimum residential parcel criteria, by multiplying its area in acres times the percent of residential land use associated with that municipality and the density (DUs per acre) assigned to that land use category. Results were rounded down to the nearest whole number before being combined with other results for the same build type in each municipality. A total of 97,553 new residential units could be constructed in the Highlands Planning Area.

4.4.6 Non-Residential Buildout Results

The non-residential buildout was computed for each polygon meeting the minimum non-residential parcel criteria, by multiplying its area in acres times the percent of non-residential land use associated with that municipality and the density (square feet per acre) assigned to that land use category. A total of approximately 90.7 million square feet of space could also be constructed in the Highlands Planning Area.

4.4.7 Potential Long-Term Impacts

The Highlands Regional Master Plan - Final Draft's provisions include a more conservative nitrate dilution factor than the proposed DEP Wastewater Management Rules to determine the minimum lot size for septic systems, and do not allow use of buffers or wetlands for drainage as provided under the proposed DEP Rules. Although these land use constraints will impact the long-term residential and non-residential development capacity of the Highlands area, they will not significantly impact COAH's 2018 growth estimates. Most of these communities are expected to experience a low level of growth and will not approach these estimated residential and non-residential development capacities over the next 10 years. The four counties having the greatest land areas within the Highlands - Morris, Passaic, Hunterdon and Warren - have an aggregate estimated residential development capacity that is more than three times the Department of Labor's projected 2002-2018 growth of 49,019 residential housing units.

4.5 New Jersey Highlands Preservation Area

The DEP was tasked with developing stringent water and natural resource protection standards, policies and regulation that would be used to govern future development in the Highlands Preservation Area. The rules are quite complex, but generally provide exemptions for the construction of a single family home on a lot that existed at the time the Act was enacted in 2004. The ability to construct more than one residential unit on a subdivided parcel is however severely restricted and is very closely linked to having sufficient unconstrained vacant land available for construction of the proposed buildings.

The Center created two buildout models for the Preservation Area to capture these differences. One for exempt parcels - those 25 acres or less in size - and a second for those greater than 25 acres in size. The 25 acre dividing point was chosen because it is the minimum parcel size (none of the land is forested) required for new development in the Preservation Area. The models both used parcel level data downloaded from the Highlands web site to identify and calculate the size of these parcels. No new non-residential construction is permitted except as redevelopment or expansion of existing non-residential building.

4.5.1 Exempt Parcels

Although the Preservation Area contains only 14,707 acres of vacant land when all environmental constraints are taken into consideration, the Highlands Act provides exemptions that permit the construction of new single family homes on land that may not be vacant under this definition:

-- *Construction of a single family dwelling for own use or family use:* The construction of a single family dwelling, for an individual's own use or the use of an immediate family member, on a lot owned by the individual on the date of enactment of the Act or on a lot for which the individual has on or before May 17, 2004 entered into a binding contract of sale to purchase that lot; and

-- *Construction of a single family dwelling on existing lot:* The construction of a single family dwelling on a lot in existence on the date of enactment of the Act, provided that the construction does not result in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more.

A 25 acre parcel size was chosen as the dividing point between the exempt and non-exempt buildout models used in the buildout capacity of the Highlands Preservation Area, because it is the minimum parcel size (none of the land is forested) required for new development. In total there are 86,253 parcels of 25 acres or less in the Preservation Area, but most are already developed. The Center did not have access to MOD4 parcel data, which would have indicated ownership and development status of these parcels. In its place, a spatial approach was developed in consultation with DEP and Highlands staffs for identifying those parcels that were likely already developed, and thus identifying those where a new single family home could be built with one of these exemptions. The 2002 LU/LC spatial data for lands already developed (IDs 1 - 5 in Dictionary) was overlaid on the parcel data. Those which had developed lands equal to 15 percent of the parcel's total area or 1 acre (whichever was larger) were classified as already developed.

A total of 9,662 parcels of 25 acres or less was found to be undeveloped and therefore eligible for the above single family home exemptions. This is an estimate, because each proposed home must still meet stringent DEP water quality management requirements in order to be constructed on that parcel.

4.5.2 Non-Exempt Parcels

There are 1,768 parcels greater than 25 acres in size in the Preservation Area that encompass a total of 207,596 acres of land. The rules that govern whether any of these parcels can be sub-divided into multiple eligible lots or at least be eligible for the above described single family home exemptions are very complex, and best addressed on a parcel by

parcel basis. In order to simplify the requirements so that a buildout analysis could be prepared, the Center in consultation with DEP and Highlands staffs developed the following criteria for identifying developable parcels:

-- *Minimum lot size requirement:* Under regulations established by DEP pursuant to the Highlands Act, the amount of land required to support each new dwelling unit on these larger parcels is a function of its forested and non-forested areas. The minimum housing lot size is calculated by multiplying the percent of total land that is forested by 88 acres and multiplying the balance times 25 acres, and then adding the two together. Thus, a parcel that is 50 percent forested requires a minimum housing lot size of 56.5 acres.

-- *Already fully developed:* The Center did not have access to MOD4 parcel data, which would have indicated the development status of these parcels. In its place, the spatial approach for exempt parcels was used to identify those parcels that were already developed. If 4 percent or more of the parcel's total land area was developed then the entire parcel was categorized as fully developed. The actual DEP rule is 3 percent of impervious surface, but the Center used 4 percent to take into consideration the presence of grass and other non-impervious areas. It also provided a linkage to the rule for exempt parcels that the presence of 1 acre of development on a 25 acre parcel (4 percent) caused the entire parcel to be declared fully developed.

-- *Partially developed:* The Center used the same process to identify those parcels that had one acre or more of developed land, but where the total did not reach or exceed 4 percent of the parcel's total area. The minimum housing lot size for each such parcel is first computed, and then the parcel is divided by that minimum. If it cannot be subdivided (parcel less than twice the minimum lot size) it is considered already fully developed since there is already an acre or more of existing development. If it can be subdivided, one lot is designated as already developed, and the remaining new lots constitute the maximum number of new homes that might be built.

-- *No existing development:* The same process is used as with partially developed to determine how many lots can be created. The difference is that at least if it cannot be subdivided it is eligible for the single family house exemption.

To determine whether a parcel can be sub-divided into multiple eligible lots requires that each existing and potential lot first meet the minimum acreage requirement described above. A second test is then required to determine if there is sufficient vacant unconstrained land on which to actually build something. That is because the regulations do not permit the construction of a building or other major disturbance on the environmentally constrained lands. As an example: a 1,000 acre non-forested parcel could under the first test be subdivided into 40 - 25 acre lots. However, if the land is fully constrained due to endangered species habitat, etc., there is no vacant land available on the parcel to build a house, garage, etc. Previous studies have indicated that an average home in large lot areas covers a total of about one acre of land, thus each buildable lot must have at least an acre of vacant land on which the house can be built. Thus, the parcel in our example cannot be sub-divided. The Center was possibly more liberal in its interpretation of this requirement than might be feasible in terms of actual land use, since it allowed up to the maximum number of buildable lots to be designated if there was at least an acre of vacant land available for each. Still, the Center determined that only 1,382 new homes could be built on these 1,768 large parcels.

4.6 Land Capacity Results

Combining the results of these land capacity studies indicates that approximately 926,480 residential housing units and 1.18 billion square feet of non-residential space can be built on the State's vacant land, based on current and projected buildout densities:

Regional Area	Residential Units	Million Sq. Ft. Space
Meadowlands	308	8.0
Pinelands	64,772	60.2
Highlands - Planning	97,553	90.7
Highlands - Preservation	11,044	0
Rest of State	752,804	1,023.7

These land capacity results are distributed among the six COAH Regions as follows:

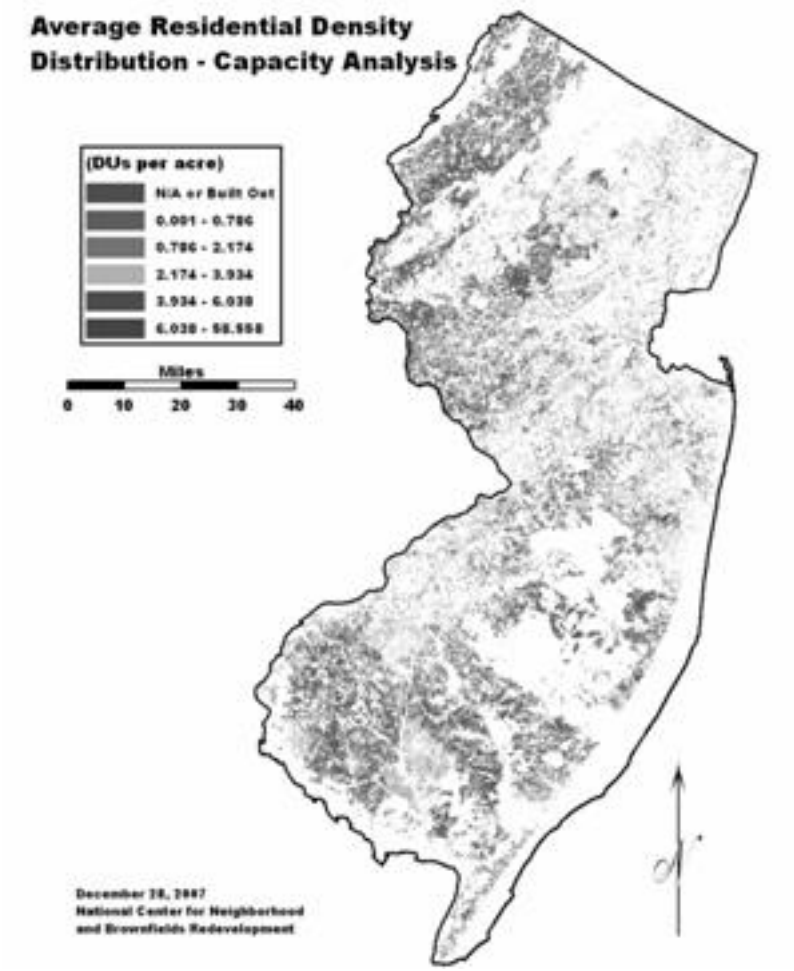
COAH Region	Residential Units	Million Sq. Ft. Space
1	110,355	182.8
2	133,171	191.7
3	152,875	201.4
4	198,832	204.8
5	162,503	209.6
6	168,744	192.3

Development of vacant lands will be at average densities lower than current average densities in many municipalities, because a large share of these lands are located in the Pinelands, Highlands and areas outside sewer service areas. A total of only 129 municipalities would experience new development at densities higher than current average levels. Of this group, 17 municipalities would experience new development densities that are 20-24 percent higher than current levels, and the median for the 129 municipalities would be about 13 percent higher. However, when added to existing residential units, the group of 17 municipalities would have total average densities that are on average only 7.7 percent higher than current levels, and the group of 129 municipalities would have total average densities that are on average

only 2.7 percent higher than current levels.

Because of the relative amounts and locations of vacant land available in the 17 towns noted above, vis-a-vis their associated densities, the average development density for the group as a whole would be 2.07 DUs per acre versus the current average of 3.42 DUs per acre. The larger group of 129 municipalities has much the same pattern of large amounts of vacant land in low density areas, and when looked at as a whole the average development density of 1.96 DUs per acre would be much lower than the current 4.37 DU per acre average.

As indicated on the map, new development will occur at low densities in the more rural areas of the state and at higher densities in those areas already having concentrations of development and thus the infrastructure need to support such growth.



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4.7 Potential Development Capacity Constraints

The DEP has proposed changes to the State's Water Quality Management Planning Rules N.J.A.C. 7:15 (published in the New Jersey Register on May 21, 2007). Numerous changes in definitions, planning agency and other sections of the

current rules have the potential to affect where and how much development may be permitted in the future. However, two major amendments will, if enacted in their proposed form, reduce the development capacity of certain categories of vacant land across the state. A third could reduce the development and redevelopment capacity of lands located in urban and suburban areas of the state over the long-term.

The first major change is the proposed "*general policy that large contiguous areas of environmentally sensitive resources, coastal planning areas where the extension of sewers would be inconsistent with New Jersey's Coastal Zone Management program and special restricted areas that are prone to natural hazards such as flooding, wave action and erosion should not be included in sewer service areas. The limitations on the extension of sewer service in these areas are consistent with the Department's mandate to protect the ecological integrity and natural resources of New Jersey, including water, threatened and endangered species, wetlands and unique and rare assemblages of plants.*" If implemented in its current form, this amendment will remove 25 acre and larger contiguous areas of undeveloped lands within an existing sewer service area that are made up of any one of wetlands, riparian buffers, habitat for threatened and endangered species, and critically important areas to conserve New Jersey's biological diversity. Most of these lands can still be developed, but will be at lower densities associated with septic treatment systems.

The second major change is the proposed reduction in the nitrate standard from the current 5.2 mg/L to a level of 2.0 mg/L. This new standard would apply to all Type 5 vacant lands (see Section 4.1.1) outside of the Highlands and those removed from current sewer service areas as noted above. However, the Rules relax the definition of lands that can be used to provide sufficient onsite dilution to include wetlands, riparian buffers and other optional environmental constraints. No buildings can be constructed on these lands, but they may be used in determining whether there is a sufficient area on the parcel for the required septic drainage field.

The Center did not use water and wastewater treatment capacity data to evaluate whether the vacant land capacity estimates in this report generate water demand that exceeds the capacity of the local provider or ground water resource, or effluent flows that exceed the treatment capacity of any sewer service area. Nor did it have any technical or other information that would allow it to determine whether such exceedances could be remedied by expansion of existing facilities and building of new plants. Under the proposed WQM Rule amendments counties will be required to develop comprehensive wastewater management plans using stricter stream loading limits (TMDLs) on point source discharges. It is therefore possible that some of the Center's long-term development capacity estimates at the municipal level will exceed the maximum capacity of wastewater treatment plants that are severely constrained by the assimilative capacity of their receiving waters. Alternative treatment processes may be required to meet future demand in these situations.

5.0 Redevelopment Potential

Many of the State's older urban and suburban communities have experienced redevelopment of former industrial and commercial sites into large residential, retail and mixed uses over the past 20 years. Former landfills in Elizabeth and Bayonne have been converted into a shopping center and golf course respectively; the Newark Bears and Trenton Thunder baseball stadiums have been built of former industrial sites; and former contaminated industrial areas along the Hudson River, in downtown Newark, Trenton and many other cities have been converted into dense residential housing mixed with some retail and commercial space. Often in conjunction with broader redevelopment of these areas, older and poor quality housing has been demolished and much more dense market rate and affordable housing has been constructed. Unfortunately, although these changes are visible, no central database has been developed to provide information on how many acres have been redeveloped, for what uses and at what densities. The Center has attempted to fill this void with analyses of land use and residential density changes, and to thus estimate the amount of new housing that will likely be created through continuing redevelopment across the State in the future.

5.1 Residential Redevelopment

An analysis was made of residential development between 1990 and 2000 and its impact on land use and residential

densities at the municipal level as a method of estimating the amount of residential redevelopment that had occurred over this period. The Center identified 121 municipalities that had a weighted average residential density in 1990 of at least 2 DUs per acre and whose new construction density over the 1990-2000 period was at least 50% higher. The new construction density was calculated by dividing the change in housing units reported by the U.S. Census over these 10 years, by the change in residential developed land over this period per a linear interpolation of the DEP LU/LC data for 1986 and 2002. In the aggregate, these municipalities had an average 1990 density of 5.36 DUs per acre and an estimated new construction density of 13.23 - a rate about 2.5 times that of what existed in 1990.

The 121 municipalities were almost evenly distributed between the six COAH Regions, with Region 2 having the greatest participation (27.9% of its 104 municipalities) and Region 4 having the lowest (19.4% of its 98 municipalities). More than three-quarters of the communities were classified as Suburban, and there were more classified as Exurban or Rural (total of 17) versus Urban (12).

A total of 60,988 housing units were constructed over the ten year period. If this construction had been at the 1990 municipal average residential densities, only 22,063 housing units would have been built. Thus, the inference is that redevelopment of existing housing units at higher densities produced the additional 38,924 units over this period. Continued redevelopment of older housing stock will thus produce an average of 3,892 new units annually.

5.2 Non-Residential Land Redevelopment

A spatial analysis was made of changes in lands classified as non-residential developed land in the DEP's LU/LC data between 1986 and 2002 at the municipal level, together with changes in lands classified as residentially developed over this same period, as well as changes in total households from U.S. Census data in 1990 and 2000, to identify and quantify the amount of developed non-residential lands that had been converted to residential use. This analysis found 125 municipalities that had lost non-res developed lands over this 16 year period that could be reasonably traced to new residential development. A total of 4,202 acres were converted over this period, or an average of 262.6 acres per year.

Although perhaps smaller than what many would expect given the redevelopment that has occurred along the Hudson River and other areas of the State, it is reflective of the long and sometime difficult process involved in cleaning up what are often contaminated (brownfield) sites. Proposed changes to soil and groundwater remediation standards in the State will make conversion of some of the better located sites to residential use more difficult, but this change in cost-benefit relationship should increase the value and opportunity for residential and mixed-use redevelopment of the hundreds of other former industrial and commercial sites located across the State.

Applying the average densities for each COAH Region determined in the residential redevelopment analysis to the conversion of non-residential lands estimated above, indicates that redevelopment of these lands would occur at an average rate of 14.43 DUs per acre. This estimate is at the lower end of the median densities of all urban type communities located in Planning Area 1, which range between 13.84 and 22.73, and well below the 25 DUs per acre density used by the Meadowlands in its Planned Residential zone. Redeveloping former industrial and commercial sites often requires demolition and removal of steel and concrete structures, as well as removing contaminates to residential standards. A pro-forma financial analysis prepared by Econsult indicates that a 25 percent increase in residential density is required to offset a 6 percent increase in construction costs and that a 15 percent increase would be needed to offset a 4 percent cost increase. Given these different considerations, the Center assumed that non-residential land redevelopment would occur at densities 15 percent higher than the average estimated residential redevelopment density of each COAH Region, as determined in the above referenced study (an average of 16.60 DUs per acre). This will generate about 4,359 new residential units annually.

5.3 Redevelopment Summary

Taken together, the redevelopment of older housing stock at higher densities and the redevelopment of former industrial

and commercial lands will produce an average of about 8,251 new housing units annually. Thus, over a fifteen year period, redevelopment could increase the state's residential housing capacity by more than 10 percent.

This historical based rate of redevelopment is expected to increase in future years, as the combination of smart growth incentives and environmental constraints shift growth away from rural areas and toward the state's urban and suburban areas that have critical transportation, water, wastewater and other infrastructure assets. In-fill development in these areas will quickly consume any remaining vacant land and increase the value of land occupied by former or underutilized industrial and commercial sites located in residential areas. Demand for additional housing will also result in many older single and multi-family housing units being demolished and replaced with more dense townhouses and mixed use condo developments. Redevelopment of older housing stock at higher densities and the redevelopment of former industrial and commercial lands could become the major source of housing for many of the state's older suburban and urban communities.

6.0 Growth Area Capacity

The State Development and Redevelopment Plan divides the State into planning areas that share common conditions with regard to development and environmental features, and refers to Metropolitan (PA-1), Suburban (PA-2) and Designated Centers as Areas for Growth. The Center believes that growth can also be supported on other lands that are located within a sewer service area. Development will also occur at much lower densities outside both of these areas, in more rural and environmentally sensitive areas that must be served by on-site septic treatment systems. The following is a breakout of the vacant land and capacity results for growth areas and those that will require septic treatment systems, by COAH Region.

Growth Areas:

COAH Region	Vacant Land (acres)	Pct. of Total COAH Region	Residential Housing Units	Pct. of Total COAH Region	Square Feet Space (000s)	Pct. of Total COAH Region
1	26,425	26.8	67,926	61.6	167,883	91.8
2	50,001	47.2	101,358	76.1	182,722	95.3
3	63,535	39.4	112,387	73.5	187,319	93
4	88,011	51.2	174,601	87.8	191,993	93.8
5	78,698	41.2	140,300	86.3	198,693	94.8
6	88,705	29.6	124,615	73.8	167,320	87
Totals	**395,375**	**38.4**	**721,187**	**77.8**	**1,095,930**	**92.7**

Growth Areas:

COAH Region	Vacant Land (acres)	Pct. of Total COAH Region	Residential Housing Units	Pct. of Total COAH Region	Square Feet Space (000s)	Pct. of Total COAH Region

Areas Served by Septic Systems:

COAH Region	**Vacant Land (acres)**	**Pct. of Total COAH Region**	**Residential Housing Units**	**Pct. of Total COAH Region**	**Square Feet Space (000s)**	**Pct. of Total COAH Region**
1	72,072	73.2	42,429	38.4	14,951	8.2
2	55,950	52.8	31,813	23.9	9,026	4.7
3	97,710	60.6	40,488	26.5	14,044	7.0
4	83,945	48.8	24,231	12.2	12,799	6.2
5	112,247	58.8	22,203	13.7	10,924	5.2
6	211,402	70.4	44,129	26.2	24,988	13.0
Totals	**633,326**	**61.6**	**205,293**	**22.2**	**86,733**	**7.3**

Although the growth areas contain only 38.4 percent of the State's vacant lands, these lands, because of their location and access to centralized wastewater treatment systems have the capacity to support 77.8 percent of the total residential housing that could be built and 92.7 percent of all non-residential floor area space in the State.

7.0 Conclusions

As noted in the Introduction, this analysis of vacant land in New Jersey and its capacity to support future growth was to be used for three primary purposes:

-- To determine if there is sufficient vacant land and remaining development capacity to support the State's projections of growth in households and employment out to at least the year 2018;

-- To determine if there is sufficient vacant land and remaining development capacity in growth areas of the State as a whole and in each of the COAH Regions, to support the use of a growth-share methodology and growth-share ratios for distributing affordable housing needs; and,

-- To provide an estimated upper ceiling or limit on the amount of household and employment growth that each of the 566 municipalities in the State will be able to absorb before it becomes fully developed.

The Center believes that each of these objectives has been achieved.

Of the State's approximate 4.98 million acre total area, about 1.03 million acres are undeveloped and unconstrained and thus available for future development. This estimate is much lower than those discussed previously by state planning officials, and reflects the recent establishment of the New Jersey Highlands and other initiatives intended to reduce the adverse environmental impacts of development on critical water and other natural resources in many areas of the State. However, it is important to put this estimate into the context of the State's land uses over time. All of the growth and development that has occurred in the 240 years since our nation was founded has only used 1.42 million acres or 28 percent of the state's total area. Remaining vacant lands have a capacity to provide an additional 926,480 residential housing units, or about 3.3 times the projected growth in new housing needs over the next 10 years. Even if no development were permitted on lands outside of a sewer service area, the 395,375 acres of vacant land within the State's growth areas have a residential development capacity that is 2.6 times projected growth.

Redevelopment of former commercial and industrial lands for mixed use and residential purposes, and the redevelopment of existing older and lower quality housing stock into new more dense townhouses and condo buildings, are creating an estimated 8,251 additional new housing units per year. This represents a further increase in housing capacity of 0.89 percent per year, or about 10 percent over the course of the next 11-12 years.

Taken together, there is clearly sufficient vacant land, future development capacity and redevelopment potential to support the State's projected growth in population, households and employment well beyond 2018.

-- As described in Section 6, and further noted above, only about 38 percent of the State's vacant lands are located in State Planning Areas 1 or 2, a Designated Center or other areas having access to centralized wastewater treatment systems (collectively referred to as growth areas). However, these locations have transportation, education, water, wastewater and other critical infrastructure assets, as well as cultural, higher education, shopping and other amenities that will attract and support considerable additional growth. The Center's analysis indicates that together these growth areas have the capacity to support 77.8 percent of the total residential housing that could be built in the State and 92.7 percent of all non-residential floor area space. An examination of the results for each of the six COAH Regions indicates that no less than 61.6 percent of the housing capacity and 87.0 percent of the non-residential floor space capacity is located within the growth area of that Region. In several Regions as much as 86-88 percent of the housing capacity and 94-95 percent of the non-residential floor areas are located within its growth area.

The magnitude of these results clearly indicate that there is sufficient vacant land and remaining development capacity in growth areas of the State as a whole and in each of the COAH Regions, to support the use of a growth-share methodology and growth-share ratios for distributing affordable housing needs.

Appendix A
Anderson Land Use/Land Cover Data Dictionary

Developed Land

ID #		
1 Residential	**LU2002_code**	**Label_02**
	1110	RESIDENTIAL, HIGH DENSITY, MULTIPLE DWELLING
	1120	RESIDENTIAL, SINGLE UNIT, MEDIUM DENSITY
	1130	RESIDENTIAL, SINGLE UNIT, LOW DENSITY
	1140	RESIDENTIAL, RURAL, SINGLE UNIT
	1100	RESIDENTIAL
	1150	MIXED RESIDENTIAL
2 Non-Residential	**LU2002_code**	**Label_02**
	1200	COMMERCIAL/SERVICES
	1300	INDUSTRIAL
	1500	INDUSTRIAL/COMMERCIAL COMPLEXES
	1600	MIXED URBAN OR BUILT-UP LAND
	7300	EXTRACTIVE MINING
3 Other -	**LU2002_code**	**Label_02**

Military

	1211	MILITARY RESERVATIONS

4 Other - Transitional	**LU2002_code**	**Label_02**
	7500	TRANSITIONAL AREAS
	7400	ALTERED LANDS
	7430	DISTURBED WETLANDS (MODIFIED)

5 Other - Plat	**LU2002_code**	**Label_02**
	1400	TRANSPORTATION/COMMUNICATIONS/UTILITIES
	1410	MAJOR ROADS
	1419	BRIDGE OVER WATER
	1440	AIRPORT FACILITIES
	1461	WETLAND RIGHTS-OF-WAY (MODIFIED)
	1462	UPLAND ROW (undeveloped)
	1463	UPLAND ROW (undeveloped)
	1499	STORM WATER BASIN
	1701	OTHER URBAN OR BUILT-UP LAND (developed)
	1710	CEMETARY

	1711	CEMETRAY ON A WETLAND
	1800	RECREATIONAL LAND
	1804	ATHLETIC FIELDS (SCHOOLS)
	1810	STADIUMS, CULTURAL CENTERS & ZOOS
	1850	MANAGED WETLAND IN BUILT-UP MAINTAINED REC AREA

NOTE: The code "1701" was assigned by NCNBR and is not a standard Anderson LULC code. Richard Grabowski of the NJDEP used 2002 aerial imagery to identify lands in the "1700" category that should be considered developed. These developed "1700" lands have been given the new designation "1701"

Undeveloped Land - Available

6 Undeveloped-Other	**LU2002_code**	**Label_02**
	1700	OTHER URBAN OR BUILT-UP LAND (undeveloped - see Note above)
	1741	PHRAGMITES DOMINATED URBAN AREA
	7600	UNDIFFERENTIATED BARREN LANDS
	1214	FORMER MILITARY; INDETERMINATE USE

7 Undeveloped-

Agriculture	**LU2002_code**	**Label_02**
	2100	CROPLAND AND PASTURELAND
	2200	ORCHARDS/VINE-YARDS/NURSERIES/HORTICULTURAL AREAS
	2300	CONFINED FEEDING OPERATIONS
	2400	OTHER AGRICULTURE
	2260	CRANBERRY FARMS

8 Undeveloped-Forest	**LU2002_code**	**Label_02**
	4110	DECIDUOUS FOREST (10-50% CROWN CLOSURE)
	4120	DECIDUOUS FOREST (>50% CROWN CLOSURE)
	4210	CONIFEROUS FOREST (10-50% CROWN CLOSURE)
	4220	CONIFEROUS FOREST (>50% CROWN CLOSURE)
	4230	PLANTATION
	4311	MIXED FOREST (>50% CONIFEROUS WITH 10%-50% CROWN CLOSURE)
	4312	MIXED FOREST (>50% CONIFEROUS WITH >50% CROWN CLOSURE)
	4321	MIXED FOREST (>50% DECIDUOUS WITH 10-50% CROWN CLOSURE)
	4322	MIXED FOREST (>50% DECIDUOUS WITH >50%

		CROWN CLOSURE)
	4410	OLD FIELD (< 25% BRUSH COVERED)
	4411	PHRAGMITES DOMINATED OLD FIELD
	4420	DECIDUOUS BRUSH/SHRUBLAND
	4430	CONIFEROUS BRUSH/SHRUBLAND
	4440	MIXED DECIDUOUS/CONIFEROUS BRUSH/SHRUBLAND
	4100	DECIDUOUS FOREST
	4200	CONIFEROUS FOREST
	4310	MIXED WITH CONIFEROUS PREVALENT (> 50% Coniferous)
	4320	MIXED WITH DECIDUOUS PREVALENT (> 50% Deciduous)
	4400	BRUSH/SHRUBLAND
	4500	SEVERE BURNED UPLAND FOREST

9 Undeveloped-Wetlands	**LU2002_code**	**Label_02**
	1750	MANAGED WETLAND IN MAINTAINED LAWN GREENSPACE
	2140	AGRICULTURAL WETLANDS (MODIFIED)
	2150	FORMER AGRICULTURAL WETLAND-BECOMING

SHRUBBY, NOT BUILT-UP)

6210 DECIDUOUS WOODED WETLANDS

6220 CONIFEROUS WOODED WETLANDS

6231 DECIDUOUS SCRUB/SHRUB WETLANDS

6232 CONIFEROUS SCRUB/SHRUB WETLANDS

6233 MIXED SCRUB/SHRUB WETLANDS (DECIDUOUS DOM.)

6234 MIXED BRUSH AND BOG WETLANDS, CONIFEROUS DOMINATE

6240 HERBACEOUS WETLANDS

6241 PHRAGMITES DOMINATED INTERIOR WETLAND

6251 MIXED FORESTED WETLANDS (DECIDUOUS DOM.)

6252 MIXED FORESTED WETLANDS (CONIFEROUS DOM.)

6500 SEVERE BURNED WETLANDS

8000 MANAGED WETLANDS (Modified)

6221 ATLANTIC WHITE CEDAR WETLANDS

Undeveloped Land - Unavailable

10 Undeveloped-

Unavailable Wetlands	LU2002_code	Label_02
	6110	SALINE MARSHES
	6111	SALINE MARSH (low marsh)
	6112	SALINE MARSH (high marsh)
	6120	FRESHWATER TIDAL MARSHES
	6130	VEGETATED DUNE COMMUNITIES
	6141	PHRAGMITES DOMINATED COASTAL WETLANDS
	7100	BEACHES
	7200	EXPOSED ROCK

11 Undeveloped-Unavailable Water	LU2002_code	Label_02
	5410	TIDAL RIVERS, INLAND BAYS AND OTHER TIDAL WATERS
	5411	OPEN TIDAL BAYS
	5420	DREDGED LAGOON
	5430	ATLANTIC OCEAN
	5100	STREAMS AND CANALS
	5200	NATURAL LAKES
	5300	ARTIFICIAL LAKES

Appendix B

Spatial Data List

NJDEP 2002 LU/LC by WMA - WMA 1-20

-*w01lu02.shp ... w20lu02.shp*

The NJDEP's Land Use Land Cover data is acting as the main base layer from which areas deemed not to be available for future development will be removed. These include the LU/LC categories Developed Land, Undeveloped-Unavailable Land, and Undeveloped Wetlands listed in Appendix A.

NJDEP 2002 LU/LC Code 1700 Update

-*BaseLayer.gdb*

This update identifies areas such as roads and other high percent impervious surface areas within the 1700 Other Urban classification, which will be reclassified as already developed.

State Plan 3

-*splan3.shp*

The NJ State Plan 3 is the most recent version of the State Plan Policy Map. It contains the legislative boundaries of the Pinelands and Meadowlands, which will be subtracted from the LU/LC base layer and addressed separately. It will also be used in the analysis and the application of buildout densities appropriate to different types of land use across the state.

Highlands Region Boundary

-*HighlandsRegion.shp*

The Highlands Region Boundary file will be used to define the area to be subtracted from the LU/LC base layer. The Highlands Region will be addressed separately.

Open07 - 2007 Open Space File

-*open07.shp*

This file contains the most current data on public open space, parks, etc. These areas will be subtracted from the LU/LC base layer.

Non Profit Open Space - Private Open Space

-*np_polygon.shp*

-*npe_polygon.shp*

This data set shows areas classified as privately owned open space, and will also be subtracted from the LU/LC base layer.

Surface Water Quality Standards

-swqs.shp

The NJDEP's Surface Water Quality Standards data will be used to extract C1 streams. The Center will calculate and insert a 300 foot buffer on each side of these streams, and subtract these areas from the LU/LC base layer.

New Jersey Farmland Preservation Program

-njfpp.shp

The New Jersey Farmland Preservation Program data will be used to identify farmland that is currently protected by the program, and therefore is not available for development. These areas will be subtracted from the LU/LC base layer.

Highlands Open Waters Protection Area (Draft)

-HighlandsOpenWatersProtectionAreaDraft.shp

This layer was used exclusively as an additional land constraint in the Highlands region. It removes a 300 foot buffered area from around all streams, rivers, lakes and wetlands in the Highlands, as identified by the New Jersey Highlands Council.

Slope Greater Than 10 Percent

-g_10percent_m.shp

This layer was used exclusively as an additional land constraint in the Highlands Preservation Area. It removes undeveloped slopes greater than 10 percent in the Highlands, as identified by the New Jersey Highlands Council.

Slope Greater Than 15 Percent, Undeveloped (Draft)

-SlopeGreaterThan15PercentUndevelopedDraft.shp

This layer was used exclusively as an additional land constraint in the Highlands Planning Area. It removes undeveloped slopes greater than 15 percent in the Highlands, as identified by the New Jersey Highlands Council.

Pinelands Management Areas

PinelandsMgmtAreas.shp

This file was obtained from the New Jersey Pinelands Commission. It outlines the Boundaries of the Management Areas defined by the Commission and is used to set buildout densities in the Pinelands region.

Sewer Service Area

-statessa.shp

This file outlines the NJDEP-defined boundaries of sewer service areas in the state. This layer is used to define buildout densities ("Build Type") in all models outside the Highlands Preservation Area.

Center boundaries of the NJ State Development and Redevelopment Plan

-cenlne2.shp

This file was obtained from the NJDCA's Office of Smart Growth. It outlines the boundaries of designated and proposed Growth Centers of New Jersey. Only designated centers are used to define buildout densities in all models outside the Highlands Preservation Area.

DEP Landscape data for Ranks 2 through 5

-LandscapeV3-Ranks2345-PresArea-DIS.shp

This data represents areas where special protection is given to rare and endangered species and was provided by the NJDEP on CD. These areas are removed from the available land in the Highlands Preservation Area.

National Heritage Priority sites

-prisites.shp

This file outlines the NJDEP-defined areas where protection is given to rare natural communities. These areas are removed from the available land in the Highlands Preservation Area.

Appendix C

COAH Regions - Counties

COAH Regions - Counties

REGION 1	**REGION 4**
Bergen	Mercer
Hudson	Monmouth
Passaic	Ocean
Sussex	

40 N.J.R. 2690(a)

Appendix C

COAH Regions - Counties

COAH Regions - Counties

REGION 2

Essex

Morris

Union

Warren

REGION 3

Hunterdon

Middlesex

Somerset

REGION 5

Burlington

Camden

Gloucester

REGION 6

Atlantic

Cape May

Cumberland

Salem

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING
TASK 1 - ALLOCATING GROWTH TO MUNICIPALITIES

Submitted To:
New Jersey Council on Affordable Housing
101 South Broad Street
Trenton NJ 08625

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Econsult Corporation
3600 Market Street 6th Floor
Philadelphia PA 19104

January 2, 2008

TABLE OF CONTENTS

1.0 INTRODUCTION

1.1 Overview

In January 2007, the Appellate Division overturned portions of COAH's Round 3 growth share methodology and requested additional analysis to support the use of a growth share approach. The Court also directed COAH to determine how much vacant land is available in growth areas of the state.

The Court's request framed the work in Task 1 of the project undertaken by the Econsult Corporation and the Rutgers' National Center for Neighborhood & Brownfields Redevelopment (NCNBR). Specifically, Econsult's part of Task 1 is to provide municipality level 2018 projections of housing units and employment, and the implied net changes between 2004 and 2018. These projection results and the inputs from other Tasks will form the base data for COAH to determine the statewide affordable housing obligations.

The New Jersey Department of Labor and Workforce Development (NJLWD) currently makes projections of population and employment for each county in the state at various projection years. Task 1 provides a method for

allocating county projections among the municipalities in each county for the year 2018. The method provides estimates of 2018 housing units and employment for each municipality consistent with the NJLWD population projections. It should be noted that projections are neither predictions nor forecasts. The NJLWD, in its discussion its county projections, provides a good perspective on the nature of projections stating that projections:

...reflect identifiable long-term economic and demographic trends which have been implicitly or explicitly incorporated into the models. In other words, the projections are an extrapolation of past and current trends into the future. These projections do not take into account any current or future policy initiatives. They are not intended to constrain or to advocate specific levels of growth in the state...These projections are best used as a reference framework for planning, research, and program evaluation.

1.2 Projection Horizon, Major Estimation Years and Historical Growth Trends

The projection horizon for Task 1 is 2018. While the original Round 3 regulations covered the period through 2014, the projection period for this revision of Round 3 regulations has been extended to 2018 so that the period could reflect an entire housing cycle. Because housing prices and production vary over long periods of time with rapid growth in some periods and slow growth in others, the research team determined that the period should be extended so that that the projection would reflect both strong and weak times in the housing market. Given the very strong housing market in New Jersey until recently, it is likely that a projection period that stopped in 2014 would have disproportionately captured a relatively slow part of the housing cycle, given the proposed rules focus on the period 2004-2018.

Although the projection period focuses on 2004-2018, the base year for the analysis is 2002, which is the latest year for which all necessary data are available for the required vacant land analysis performed by NCNBR. Data are extrapolated to 2004 to reflect the beginning of the period of growth that will be used by COAH to measure affordable housing obligations. Thus, the operating projection period in Task 1 is from 2002 to 2018. For consistency, the current Round 3 COAH rules use employment projections for the same period. To be consistent with the revised time frame for Round 3 COAH, housing and employment figures are reported for each municipality for the following years: 2002, 2004, and 2018.

NJLWD county projections are allocated to the municipal level based on historical trends for each municipality and the extent to which each municipality approaches its physical growth capacity. We measure actual municipal growth in the nine years prior to 2002. The beginning of the nine-year period in 1993 is the earliest year for which NJLWD provides employment data at the municipality level. To be consistent with the employment allocation model, the housing unit model also adopts 1993 as the beginning year for measuring municipal growth rates for housing.

1.3 Data Sources

The primary data used in the allocation model provided include: data available from the NJLWD, land capacity estimates provided by NCNBR, and data from the U.S. Census Bureau's 1990 and 2000 Census. These data include historical figures on population and employment at the municipal level and future projections at the county level. Data from post 2002 American Community Survey (ACS) is also used for gauging trends and various ratio analyses at the county level.

1.3.1 NJLWD County Projections

In May 2007, COAH, the University of Pennsylvania research team, and Econsult agreed to use county projections of population and employment provided by NJLWD in the Task 1 allocation models. These projections are the control totals for each county; that is, estimates of for each municipality are forced to sum to the population and employment data for that county. These restrictions ensure that municipal estimates will be consistent with county projections.

While other projections exist, most notably Metropolitan Planning Organization (MPO) projections, the population and employment projections provided by the NJLWD were chosen to provide the county control totals for population and employment for several reasons. First, there is a common methodology for forecasting population and employment for all New Jersey Counties. Methodological and data consistency is the primary concern in choosing a set of projection data that applied uniformly across the state. Since the NJLWD projection models have built-in connection of population and economic changes, the projection method is not only consistent across geography but across sectors.

Prepared separately by three different MPOs, the county projections from MPOs do not add up to an agreeable state total. Since the South Jersey Transportation Planning Organization (SJTPO) does not report its projection methodology in its website, we cannot evaluate it in details. The county population projection models used by Delaware Valley Regional Planning Commission (DVRPC) and the North Jersey Transportation Planning Authority (NJTPA) are similar in terms of using countywide and region-wide cohort survival techniques, but their county employment models differ significantly. DVRPC uses an employment-to-population/household method while NJTPA uses the NJLWD, the New York Metropolitan Transportation Council (NYMTC) and a regional shift-share method to estimate the county employment range. NJLWD projections, on the other hand do not have such methodological inconsistencies.

The NJLWD approach provides a consistent methodology in its projection of county population and employment by industry (work place based). It is reported in
http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi03/method.pdf.

NJLWD developed and compared the merit of four projections models:

· Economic-Demographic Model

· Historical Migration Model

· Zero Migration Model

· Linear Regression Model

NJLWD chose the Economic-Demographic Model as the preferred model for the county population and employment projection. In this model, related methods are used. Cohort-survival method is used to project population initially but the projection is adjusted by how future labor demand affects age-specific migration.

It should be noted that MPO's make some projections at the municipal level. However, each MPO distributes the county totals to municipalities in different manners. Again, SJTPO does not report its method. The allocation method used by NJTPA is similar to the Econsult method. However, DVRPC focuses on adjusting the difference in the current forecast and the previous one; and relies much on the input of county planning staff to revise the municipal forecasts. Once again, the inconsistency is problematic for developing statewide rules.

2018 County Population Projections

NJLWD's Projections of Total Population by County: 2004 to 2025
(http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi03/Table1.pdf) provides county population projections for 2009, 2014, 2020, and 2025. The NJLWD projection figures are reported to the nearest 100 persons. An interpolation of the 2014 and 2020 projections in this table generated the implied 2018 county population projection that serves as the county control total in the Task 1 housing allocation model.

2018 County Employment Projections

NJLWD's Projections of Total Employment by County: 2004 to 2014 (http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi04/index.html#ind) provides tables of industry employment projections for each county in New Jersey. Unlike the occupational employment tables that contain data on employment held by county residents regardless of work location, these 21 tables report numbers of people working each county regardless of residence location. Each table reports the 2014 projected employment level for the private sector, local government, state government, and federal government, as well as the actual 2004 employment level. To keep a range of projection, these figures are rounded to the nearest 50 jobs.

Since no state government employment is reported at the municipal level, any model to distribute county employment to municipalities cannot accurately allocate employment in this sector. This point will be further elaborated in Section 3.2.2. As such, the employment sum of the private sector, local government and federal government of each county serves as the control total instead of the total employment.

NJLWD does not provide the 2018 projection, so it has to be extrapolated from known historical trends. An annualized growth rate was computed based on the 2002 county employment estimates (from http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi14/cvremp02.zip) and the 2014 county projection mentioned above (both exclude the state government sector). This rate is applied to extrapolate the 2018 county employment projections (covering only the private sector, local government and federal government) that serve as the control totals for the 2018 municipal employment projections.

1.3.2 NJLWD Historical Estimates <1>

The historical data at the municipal level are crucial for the allocation model because they exhibit the historical growth rates of each municipality, particularly the reference period between 1993 and 2002. They are also used to evaluate how historical growth affected by its respective build-out constraint. The municipal population and employment estimates in 2002 are critical in the allocation model because the initial allocation (before taking into account various constraints and spillover) is based on historical growth from 1993 to 2002 and the extent to which a municipality is built-out.

Municipal Population Data

NJLWD computes annual population estimates at the municipality level based on the estimations provided by the US Census Bureau. Two sets of NJLWD population data are used in this study. The first is a table in which NJLWD reported the residents' population by municipality for each year between 1990 and 1999 (as revised in July 2003 to make necessary adjustments for the 2000 census results): http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi02/inter9090.htm. The second is an Excel table (released in July 2007) that reports the US Census Bureau estimates of resident population for each municipality for each year between 2000 and 2006: http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi02/mcd/mcdest06.xls.

NJLWD reports these population estimates as at July 1 of each year, so the population/housing estimates in this report should be considered as mid-year figures. The 1993 and 2002 municipal population estimates were entered into the allocation model and in turn converted to housing units for the calculation of historical growth rates.

Municipal Employment Data

Compared to the population data, the employment data for New Jersey are more complicated because of data privacy requirement issues and the change from the SIC classification system to the NAICS system in the late 1990s. Consequently, the data coverage across geographical areas and sectors (private, local government, state government, and federal government) varies across years. In addition, employment estimates at the state level do not always tie to sums of local estimates.

More importantly, state government employment information is not reported by municipality. The employment allocation model in Task 1 excludes state government employment because of the absence of information to guide its distribution at the sub-county level. Statewide, about 3 percent of the total employment falls into the state government sector.

The NJLWD municipal employment data covers the period between 1993 and 1999. After 1999, the only available municipal employment is for a single year of 2003. The data quality of these 8 datasets varies tremendously because of underreporting and missing data. From several conversations with the NJLWD researchers, we have identified only two years of reliable municipal employment estimates for the private sector, the local government, and the federal government that match the data reported at the state and county levels. These years are 1997 and 2003.

The employment estimates for 1993 were reliable for the federal government and for the private sector, but the reported local government jobs were about 60 percent undercounted when compared to the state total. <2> The growth rate of local government jobs between 1997 and 2003 has been used to extrapolate backward these undercounts for each municipality. Through that process, the aggregation of local government jobs is ensured to be close to those reported at the county level as well as at the state level.

The allocation model requires employment data for 2002 as an input but NJLWD does not report employment at municipal level. To overcome this problem, the 2002 employment was interpolated for each of the three sectors (the private sector, the local government, and the federal government) between 1997 and 2003. Since the estimation is only one year backward from 2003, if any estimation error exists, it should be minimal. In addition, the 2002 estimations are summed at the county level and adjusted so that they match those reported at the county level by NJLWD.

The three datasets for 1993, 1997 and 2003 can be found at:

· http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi14/muns293.zip

· http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi14/muns297.zip

· http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi14/mun/mun03.xls

As year round averages are not available in these three datasets, this report used the September estimates for consistency across years. Consequently, all employment estimates are treated as in September.

Historical Estimates at State and County Levels

The NJLWD provides population and employment data at the state and county levels. The employment data are used to identify undercounting at the municipal level due to missing data, data suppression and undistributed portions. As mentioned above, the county employment is also used to as a control total in the correction of underestimation of the local government employment in 1993 and the estimation of the 2002 employment at the municipal level.

The population data can be found at:

http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi02/index.html#county.

Employment data are at:

http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi14/#.

1.3.3 NCNBR Growth Capacity Analysis

The vacant land analysis results provided by NCNBR are key data inputs to the allocation model. Based on detailed GIS analysis at the sub-municipality level, this analysis provides estimates of the potential number of housing units and the square footage of nonresidential floor space (by major types of office, retail, warehouse/industrial, and blended) that each municipality may potentially develop after 2002. These estimates are essentially "build-out" constraints for each municipality.

1.3.4 U.S. Census, American Community Survey, and Public Use Micro Sample Data

The U.S. Bureau of Census provides various data at the municipal level that are essential for Task 1, including ratios of: occupancy rate, headship rates, average household size, and housing unit/population ratios for 1990 and 2000. These data are useful for Task 1 even though they are not reported annually.

Additional data from the American Community Survey and from PUMS provide useful references, particularly for post 2002 data at the county and state levels. This data provides information about recent trends in headship rates and other ratios.

2.0 OVERVIEW OF THE ALLOCATION MODEL

The most common method used by researchers to disaggregate high-level forecasts to smaller geographic areas is the constant share allocation method. Essentially, this method first calculates the share of each smaller area in the larger area, then multiplies these shares by the projection of the larger area to derive the projections of the smaller areas.

The constant share method has three major drawbacks.

· It assumes a uniform growth rate across every sub-entity,

· It does not allow these shares to change over the projection period, and

· It does not factor in local conditions such as growth constraints.

To overcome these drawbacks, the Task 1 team developed a more sophisticated allocation model that is consistent with basic urban economic theories. This model was then used to allocate the 2018 countywide projected growth estimates across the municipalities in the county. The 2018 estimate of population was interpolated from the NJLWD data and the 2018 estimate of employment was extrapolated from the NJLWD data. There are four major inputs to the allocation model:

· NJLWD 2018 projections of population and employment at the county level

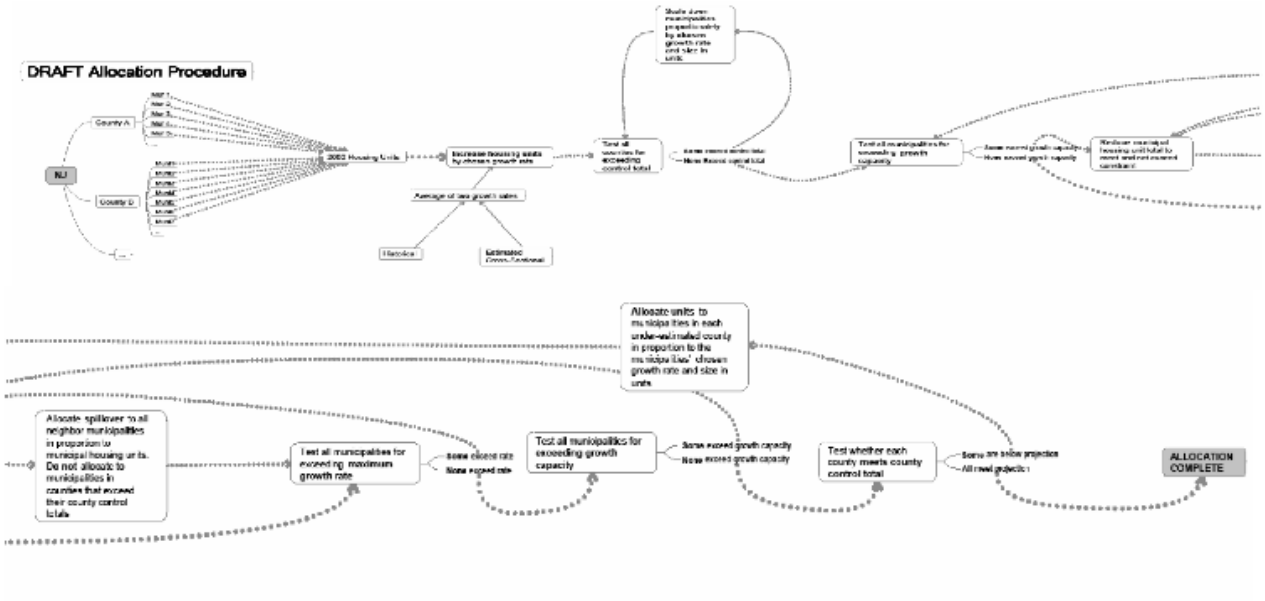
· Historical growth rates of population and employment of each municipality between 1993 and 2002

· Post-2002 growth capacity as estimated from the NCNBR vacant land analysis

· The implied growth rate estimated by a regression model on the relationship between the 1993 build-out level and historical growth rates of 566 municipalities (Appendices 1 and 2).

The allocation process is simple in concept but complex in implementation. The process is iterative in nature and is shown in Figure 2.1. While the flow chart is specifically for the housing model, the employment allocation model has essentially the same procedures. Below, the basic steps of the allocation model are delineated below.

Figure 2.1 – Allocation Model Flow Chart



Source: Econsult Corporation (2007)

Click here for image

The first step projects the 2018 housing units and employment for each municipality based on the chosen growth rate based on the average of the historical growth rate of the municipality and the implied growth rate estimated from the historical build-out level (as discussed in Appendices 1 and 2). These projections are aggregated at the county level and compared to the 2018 projections (labeled here as the county control total). <3> When the sum exceeds the county control totals, the projections are proportionately scaled down.

The second step in the allocation model is to verify that the physical growth capacity is not exceeded. The NCNBR vacant land analysis provides estimates of the maximum growth level a municipality may reach after 2002. The growth of each municipality is checked to see if such limits were achieved. <4> The 2018 projections are constrained to not exceed the municipal growth capacity.

The third step is to ensure that the projected growth rate of each municipality does not exceed the maximum of either its historical growth rate or its implied growth rate estimated from the historical build-out level. <5> This step imposes a maximum growth rate constraint and ensures that the future growth of each municipality will not be too fast based on both historical trends and the degree to which development is constrained by available land. This approach allows communities to grow faster than their historical rates, but tends to inhibit growth when a municipality is closer to complete build-out. Note that in the final step of the model, municipalities may exceed the maximum of the historical and build-out growth rate if it is required to scale to the control totals.

In the fourth step, the spillover amounts for municipalities that had growth rates beyond either the physical growth capacity or the maximum growth rate constraint (as established in the third step) are calculated. The spillover is sent to any adjacent municipalities whose growths have not reached their growth capacity or maximum growth rate. Once

adjacent municipalities reach their constraints, any remaining spillover is allocated to the next ring of adjacent municipalities.

These four steps are repeated to see if individual municipalities exceed the growth capacity and maximum growth rate constraints after receiving a portion of the spillover. Each successive iteration results in a smaller and smaller spillover. The iterations continue until all of the spillover has been allocated and no municipality exceeds its constraints.

The fifth step is to re-check if the county sum is below the county control total after all spillover is distributed. If the two do not match within a range of 0.1, a ratio of municipal sum at the county total to the county control total is created. Then the ratio is multiplied to the 2018 projection for municipalities that have not reached their growth constraints. In other words, municipalities that have not reached their growth constraints would be scaled up so that the county sum matches the control totals. Then the second and onward steps would start again until the difference between county sum and county control total match.

3.0 HOUSING ALLOCATION MODEL

3.1 Scope

The purpose of the Round 3 COAH is to estimate the statewide and regional affordable housing obligations. The housing unit, therefore, logically becomes the unit of analysis for the residential growth allocation model. Furthermore, the residential portion of the constraint developed by NCNBR's vacant land analysis for the post-2002 municipal growth capacity is expressed in dwelling units.

The U.S. Census Bureau and NJLWD do not provide housing unit figures at the municipal level on a yearly basis. Reliable housing unit figures are only reported in 1990 and 2000 (Summary Tape File 1 of the 1990 census and Summary File 1 of the 2000 census). The availability of these data allows the computation of housing unit to population ratios for 1990 and 2000. Based on these two ratios, we estimated a 1993 ratio using linear interpolation. Multiplying the interpolated 1993 ratio by the estimated 1993 population levels for each municipality provided the estimated number of housing units for each municipality in that year.

The estimation of the number of housing units after 2000 was completed in a slightly different manner. In the absence of any information on the future relationship between population and housing units, the housing unit to population ratio used in the allocation model is the 2000 ratio. In other words, it is assumed that the 2000 ratio will remain constant through 2018. The 2002 housing unit amount is projected by multiplying the estimated 2002 population by the 2000 housing unit to population ratio.

3.2 Procedure

Housing units in 2018 for each municipality were projected by initially applying the average municipal historical growth rate and the implied growth rate of growth based on the 1993 build-out level. This implied growth rate is econometrically estimated by a cross-sectional regression of 1993 to 2002 municipal housing growth as a function of the percentage of the total possible build-out that has already occurred in 1993. As expected, this estimation -- discussed in greater detail in Appendix 1 -- reveals that growth slows as municipalities approach their build-out capacity. Henceforward, we refer to the growth rate implied by this cross-sectional relationship as the "build-out growth rate." The average of the historical growth rate and the implied "build-out growth rate" is used to reflect the fact that there are unique circumstances associated with individual municipalities that may not be captured in the build-out growth rate, but are reflected in the historical rates. Growth rates are expected to fall as municipalities approach complete build-out, which is reflected, in part, by averaging build-out and historical rates.

The initial projections are then scaled to be consistent with the county control totals. Since the county control totals

from the NJLWD 2018 projection are in terms of population rather than housing units, it is necessary to convert the housing unit projections to population projections. The projected number of housing units per municipality was then divided by the 2000 housing unit to population ratio to derive the projected 2018 municipal population. These population figures were added at the county level and compared to the projected 2018 county control totals.

If the county control totals were exceeded, the municipal population was scaled down in proportion to its growth between 2002 and 2018, until the sum of the population within a county matched that of the county control totals. The adjusted municipal population was then converted back to housing units after the downward scaling. The new projected growth was then compared to the two constraints: a) the post-2002 physical growth capacity, and b) the maximum growth rate constraint, i.e., the maximum of its historical growth rate and the build-out growth rate.

The above step provides an estimate of the spillover of housing units for those municipalities that either reached its physical growth capacity or exceeded the maximum growth rate constraint. These spillover units were distributed to neighboring municipalities until the receiving municipalities reached growth limits (due to either physical growth capacity or the maximum growth rate constraints).

The redistribution of the spillover housing units proceeded until all units were fully allocated and none of the receiving municipalities exceeded the two growth limit conditions. Once this was achieved, a scaling up procedure was performed for municipalities in those counties for which the sum of the projected 2018 population at the county level was below the county control total, even after accepting spillover housing units from other counties. However, municipalities that have reached its maximum growth limit will not be scaled up. After this scaling up procedure, the same spillover allocation procedure was performed until the spillover was fully distributed.

The allocation model provides housing unit figures for 2002 and 2018. To estimate the 2004 housing units, we use a straight-line interpolation between 2002 and 2018.

3.3 Results

In 2002, the number of residents in New Jersey was 8,577,510 and it grew to 8,675,880 in 2004. According to NJLWD, the projected state population in 2018 is 9,411,670. This implies an absolute growth of 735,790 residents between 2004 and 2018, or a total growth of 8.5 percent in that period. It is important that keep in mind that these numbers are projections 10 years into the future, based on historical experience, demographic and economic theory. Since the future does not exactly mimic the past, the actual population growth will differ from these projections.

Based on the 2002 population and the 2000 housing to population ratio, it is estimated that in 2002 there were 3,372,924 housing units in New Jersey. Housing grew to 3,412,981 units in 2004. The allocation model estimated that in 2018, New Jersey would have 3,693,380 housing units. For the 2004 to 2018 period, the net increase is 280,397 units or a total growth of 8 percent. At this rate of growth, the state will gain about 20,028 housing units per annum.

Figure 3.1 summarizes the allocation by COAH region. The fastest growth in housing units is found in COAH Region 4, 5 and 3 (in descending order), all would experience over a 10 percent growth between 2004 and 2018.

Figure 3.1 - Housing Units by COAH Region: 2002, 2004 and 2018

COAH region	Units in 2002	Units in 2004	Units Allocated 2018	Net Changes 2004 - 2018	Annual Rate of Change 2004 to 2018*
1 - Northeast	816,451	822,569	865,397	42,828	0.36%
2 - Northwest	718,142	725,236	774,896	49,660	0.47%
3 - West Central	443,713	450,495	497,966	47,471	0.72%
4 - East Central	641,904	651,913	721,975	70,062	0.73%
5 - Southwest	465,643	472,781	522,750	49,968	0.72%
6 - South-Southwest	287,070	289,986	310,394	20,408	0.49%
New Jersey	**3,372,924**	**3,412,981**	**3,693,378**	**280,397**	**0.57%**

**Growth rates are calculated at a compound (exponential) annual rate*

Source: Econsult Corporation (2007)

Figure 3.2 summarizes the housing allocation by county. All counties grew in housing units except Cape May County, for which NJLWD projected barely a growth of 270 residents between 2004 and 2018. The highest housing growth rates between 2004 and 2018 are found in Gloucester County, Sussex County and Ocean County (in descending order). It should be noted that the growth in housing units may not correspond to the change in population because each county has different housing unit to population ratios.

Figure 3.2 - Housing Units by County: 2002, 2004 and 2018

County	Units in 2002	Units in 2004	Units Allocated 2018	Net Changes 2004 - 2018	Annual Rate of Change 2004 to 2018*
ATLANTIC	116,609	118,621	132,707	14,086	0.80%
BERGEN	344,139	346,781	365,272	18,491	0.37%
BURLINGTON	166,898	169,942	191,244	21,302	0.85%

County	Units in 2002	Units in 2004	Units Allocated 2018	Net Changes 2004 - 2018	Annual Rate of Change 2004 to 2018*
CAMDEN	200,747	202,589	215,483	12,894	0.44%
CAPE MAY	90,802	90,690	89,905	-785	-0.06%
CUMBERLAND	53,342	54,018	58,748	4,730	0.60%
ESSEX	301,981	303,777	316,348	12,571	0.29%
GLOUCESTER	97,997	100,251	116,023	15,772	1.05%
HUDSON	241,008	241,816	247,471	5,655	0.17%
HUNTERDON	46,741	47,681	54,266	6,585	0.93%
MERCER	135,937	137,741	150,362	12,621	0.63%
MIDDLESEX	281,166	284,859	310,714	25,855	0.62%
MONMOUTH	245,408	248,245	268,102	19,857	0.55%
MORRIS	177,607	180,452	200,365	19,913	0.75%
OCEAN	260,559	265,928	303,511	37,583	0.95%
PASSAIC	172,956	174,423	184,690	10,267	0.41%
SALEM	26,317	26,656	29,034	2,378	0.61%
SOMERSET	115,807	117,954	132,986	15,032	0.86%
SUSSEX	58,348	59,550	67,964	8,414	0.95%
UNION	195,495	197,084	208,202	11,118	0.39%

County	Units in 2002	Units in 2004	Units Allocated 2018	Net Changes 2004 - 2018	Annual Rate of Change 2004 to 2018*
WARREN	43,059	43,924	49,981	6,057	0.93%
NEW JERSEY	**3,372,924**	**3,412,981**	**3,693,378**	**280,397**	**0.57%**

Source: Econsult Corporation (2007)

The full allocation result by municipality can be found in Appendix A.

It should be noted that the projection is for total housing units in 2018 and net changes in units from 2004 to 2018. The increase in number of housing units is not, however the total number of new units that need to be constructed over the period. In addition to building the new projected here, additional units must be constructed to replace units demolished over the same period. The additional units required to offset demolition is not analyzed in this task.

4.0 THE EMPLOYMENT ALLOCATION MODEL

4.1 Scope

4.1.1 Unit of Analysis

The majority of the input data for this model are employment data. These include the 1993 and 2002 municipal employment levels and the NJLWD 2018 projected county employment levels. As indicated in Section 3, the state government sector is not reported anywhere at the municipal level, so this employment allocation model only covered three sectors: private employment, federal government, and local government. State government employment will be discussed separately. The other input data is non-residential build-out constraints.

4.1.2 Converting Floor Space to Employment

The physical growth capacity in this model is based on the data generated by the NCNBR vacant land study. The data are expressed in terms of gross floor area and are broken down into office, retail, warehouse/industrial, and others/blended for almost all municipalities.

When testing whether the future growth limit is reached with the projected employment level, it is important to translate the gross floor space into employment. Task 4 includes a literature review and a sample survey for New Jersey on employee/floor space ratios by type of uses. Here are the ratios (in terms of number of employees per 1,000 square feet of gross floor space) we recommended in Task 4:

- Office 3.32
- Retail 2

·	Warehouse	1.72
·	Manufacturing and Industry	1.43

These ratios could be sensitive to the estimated amount of employment based on the potential nonresidential development, so all chosen ratios in the employment allocation model were within the upper and lower bound of those recommended by Task 4. For the purposes of this analysis this resulted in an average ratio of 2.9 per 1000 feet to convert build-out square feet to employment which is close to the median ratio found in Task 4. Using an adjustment of 8% for vacancies and 15% for common areas this translates to 2.25 employees per 1000 square feet. This ratio was not identical for all municipalities because their current mix of commercial space varies by municipality.

4.2 Procedure

The employment model is similar in structure to the housing model. Statewide, the historical employment growth rate (excluding the state government sector) is approximately 1.3 percent between 1993 and 2002, but some municipalities experienced annual rates over 15 percent in this period. While the majority of such municipalities had a very small employment base in 1993, some mid-size municipalities (with 1993 employment around 2,000 jobs) like Allendale Borough in Bergen County, Swedesboro Borough in Gloucester County, and Monroe Township in Middlesex County, had annual rates exceeding 15 percent. In other words, these municipalities more than doubled their employment primarily due to new development. Such fast employment growth rates are unlikely to sustain, especially when their growth capacity is being used up. In addition, initial tests showed that the allocation based on the average of the historical rate and the build-out growth rate resulted in a high degree of spillover as many municipalities would hit the two growth constraints in the model.

In the first step, the initial municipal employment by 2018 was projected based on the average of the historical growth rate or the build-out growth rate. These initial projections were summed at the county level and compared to county control totals. In the case of exceeding the county control totals, the employment of each municipality was scaled down.

Next, the growth of each municipality was measured against its physical growth capacity to ensure that the build-out level did not exceed 100 percent of its physical development capacity. It was also compared to the maximum growth rate (either the historical rate or the build-out growth rate). The spillover was then estimated and sent to those adjacent municipalities that had the capacity to receive the spillover.

In each round of the allocation of the spillover, each receiving municipality was checked to ensure that the growth increment did not violate the two growth constraints of the model (growth capacity and maximum growth rate).

For counties that had a sum of initial projected employment less than the county control totals, their municipalities would receive cross-county spillover under the same set of constraints. The county total was then compared to the control total. If the county total was still below the control total, the municipality employment was scaled upward and the spillover allocation procedures followed.

This process resulted in a municipal allocation that summed to within 0.4% of the total statewide employment. Each county was close to its control total as well. The remaining 0.4% of employment was allocated by proportionately scaling up or down municipalities in each county such that the projections summed to the county control totals exactly and neither the growth rate nor build-out constraints were violated. <6>

4.3 Results

In 2002, the employment (excluding state government employees) in New Jersey was 3,649,890, slightly lower than the 1999 figures, reflecting the recession in 2000 and 2001. According to the NJLWD projected 2014 employment, it is extrapolated that in 2018, the employment would reach 4,476,040. This implies an absolute growth of 772,890 jobs between 2004 and 2018, or a total growth of 19 percent during that period. At this rate of growth, the state will gain about 51,630 jobs per annum from 2004 to 2018. Note that the NJLWD projections reflect past history and market realities. As with population, the actual employment growth will differ from that projected by the NJLWD. The full allocation result by municipality is in Appendix 4. Map 2 below shows the annual growth rate by municipality.

Figure 4.1 summarizes the employment allocation by COAH region. The fastest growth is found in COAH Region 4, which is projected to grow at an annual rate of 1.7% between 2004 and 2018.

Figure 4.1 - Employment by COAH Region: 2002, 2004 and 2018

COAH Region	Employment in 2002	Employment in 2004	Employment Allocated 2018	Net Changes Between 2004 and 2018	Annual Rate of Change 2004 to 2018
1 - Northeast	884,072	906,217	1,061,235	155,018	1.1%
2 - Northwest	879,693	903,057	1,066,602	163,545	1.2%
3 - West Central	594,298	607,514	700,025	92,511	1.0%
4 - East Central	552,462	574,244	726,717	152,473	1.7%
5 - Southwest	475,741	493,129	614,841	121,712	1.6%
6 - South Southwest	263,621	268,996	306,622	37,626	0.9%
New Jersey	**3,649,887**	**3,753,156**	**4,476,042**	**722,885**	**1.3%**

Source: Econsult Corporation

Figure 4.2 summarizes the employment growth of each county. All would increase their employment base and the highest growth is found in Sussex County, Gloucester County, and closely followed by Ocean County, Mercer County and Monmouth County. On the other hand, Cape May County and Middlesex County would experience slow growth.

In Bergen county, the initial allocation based on historical and S-curve growth rates was not sufficient to meet the county control total. The allocation program altered the county control total for Bergen to account for this, decreasing it

by 23,866. This extra county-level forecasted growth was then spilled over into neighboring Passaic and Hudson counties, within Bergen's COAH region. The 23,866 spillover was allocated based on the 2002 employment in each receiving county; Hudson County received 58% of the growth and Passaic County received 42%.

Figure 4.2 - Employment by County: 2002, 2004 and 2018

County	Employment in 2002	Employment in 2004	Employment Allocated 2018	Net Changes 2004 - 2018	Annual Rate of Change 2004 to 2018
Atlantic	141,267	144,513	167,237	22,724	1.05%
Bergen	442,776	451,319	511,120	59,801	0.89%
Burlington	189,071	196,056	244,951	48,895	1.60%
Camden	197,095	203,151	245,540	42,389	1.36%
Cape May	45,014	45,449	48,496	3,047	0.46%
Cumberland	55,708	56,866	64,971	8,105	0.96%
Essex	338,076	344,882	392,524	47,642	0.93%
Gloucester	89,575	93,922	124,350	30,428	2.02%
Hudson	235,617	242,248	288,669	46,421	1.26%
Hunterdon	45,540	47,115	58,136	11,021	1.51%
Mercer	169,772	176,557	224,054	47,497	1.72%
Middlesex	378,605	386,180	439,204	53,024	0.92%
Monmouth	241,567	250,788	315,331	64,543	1.65%
Morris	275,611	285,383	353,790	68,407	1.55%

County	Employment in 2002	Employment in 2004	Employment Allocated 2018	Net Changes 2004 - 2018	Annual Rate of Change 2004 to 2018
Ocean	141,123	146,899	187,332	40,433	1.75%
Passaic	168,692	173,522	207,336	33,813	1.28%
Salem	21,632	22,168	25,918	3,750	1.12%
Somerset	170,153	174,220	202,685	28,465	1.09%
Sussex	36,987	39,127	54,110	14,983	2.34%
Union	229,810	235,548	275,711	40,163	1.13%
Warren	36,196	37,244	44,577	7,333	1.29%
New Jersey	**3,649,887**	**3,753,156**	**4,476,042**	722,885	1.27%

Source: Econsult Corporation

The full allocation result by municipality can be found in Appendix B.

5.0 STATE GOVERNMENT EMPLOYMENT

The employment allocation model does not cover this sector because of data deficiency at the municipal level. However, to complete the employment picture, some discussion on the state government sector is deserved.

First, from a policy perspective, the growth of state government employment is usually not the prerogative of local government. The planning and development of state facilities is initiated by the state government. As such, the housing obligations resulted from the growth of state government employment should be better born by the state government.

Second, the state government sector only accounts for about 3.5 percent of the total employment in New Jersey. For majority of the municipalities, this sector has little housing impact. However, due to the highly uneven geographical distribution of state government jobs, few municipalities, such as Trenton, have a fairly high share of jobs in this sector. Over the past decade, over one of six jobs in Mercer County belonged to the state government. The available data, however, are not sufficient to identify the distraction with the county.

<1> The three MPOs report population and employment at the municipality level through 2000 to 2030 at five year intervals, but not for earlier years. Since we adopted the NJLWD projection, the MPO data is used for reference only.

<2> The same undercounting of local government jobs occurred in other years except 1997 and 2003. The 1994 and 1995 data missed all federal government employment figures.

<3> The housing unit comparison is performed after converting the 2018 municipal housing unit projection to population by applying the 2000 municipal population to housing unit ratio. Direct comparison cannot perform because 2018 housing projection is unavailable.

<4> Since the physical growth capacity only provides number of housing units for residential land, and floor space for nonresidential land, the nonresidential floor space is converted to employment before the verification. The conversion factors are discussed in Section 6.1.2.

<5> In section 5.2, we describe in more details how we apply the empirical relationship between housing growth and historical build-out level.

<6> In this final step, adjacency was not taken into consideration.

APPENDIX A - MUNICIPAL GROWTH RATES IN THE HOUSING ALLOCATION MODEL

Housing growth of a municipality should slow down as the municipality's physical growth capacity is being reached. In other words, a municipality is unlikely to sustain its historical growth rates as measured between the 1993 and 2002 period in the following 16 years if it has already approached a high build-out level.

To capture this relationship between the anticipated housing growth rate between 2002 and 2018 and the 2002 build-out level, a regression model was developed to empirically estimate the implied historical growth rates that measure how build-out levels affect future growth rates. In this model, the dependent variable is the housing growth rate (a linear annual growth rate) between 1993 and 2002 for each of the 566 municipalities. The independent variable is the 1993 build-out level and was estimated by dividing the number of housing units in 1993 with the sum of the 2002 housing units and the number of potential housing units that could be built after 2002. This equation applies to municipalities that had a positive growth between 1993 and 2002. However, for a few declining communities, this equation may end up a build-out ratio over 100 percent when the amount of housing units lost between 1993 and 2002 is larger than the post-2002 growth capacity. In this case, the build-out level is estimated by changing the denominator in this equation to the sum of the 1993 housing units and the number of potential housing units that could be built after 2002.

This regression model had 566 observations initially but outliers with historical growth rates above the 99 percentile or below the 1 percentile in the sample were excluded in the model. Since municipalities within the same COAH Region may behave differently as a group from others in a different COAH Region, the slope and the y-intercept of the implied rates would also differ by COAH region. Two sets of dummy variables are introduced in the model. The first set of 5 dummy variables captures the effects of the COAH region, i.e. it will change the y-intercept or the initial historical rate when the build-out level is 0. The second set of dummy variables measure the interaction effects of COAH region on the slope of the curve.

The functional form of the model is in cubic form (a declining curve with two turns). The goodness of fit of a regression model is usually measured by coefficient of determination (adjusted R Square that explains the percent of variations in

the data). The Task 1 regression model of implied historical growth rate of housing units has a coefficient of determination of 0.4778, a strong result for cross-sectional regression models.

Figure A.1 - Housing Unit by Municipality: 2002, 2004 and 2018

Municipality	COAH Region	County	Units in 2002	Units in 2004	2018 Units Based On Historic Growth	2018 Units Based On "S" Curve
Absecon City	6	ATLANTIC	2,924	2,967	3,091	3,041
Atlantic City	6	ATLANTIC	20,070	20,052	19,120	20,070
Brigantine City	6	ATLANTIC	9,329	9,329	9,645	9,375
Buena Borough	6	ATLANTIC	1,539	1,545	1,513	1,671
Buena Vista Township	6	ATLANTIC	2,840	2,889	3,054	3,108
Corbin City	6	ATLANTIC	219	226	259	242
Egg Harbor City	6	ATLANTIC	1,750	1,769	1,801	1,876
Egg Harbor Township	6	ATLANTIC	13,063	13,829	17,880	14,774
Estell Manor City	6	ATLANTIC	563	586	710	643
Folsom Borough	6	ATLANTIC	702	712	738	729
Galloway Township	6	ATLANTIC	12,264	12,850	15,975	13,725
Hamilton Township	6	ATLANTIC	8,105	8,390	9,819	8,937
Hammonton Town	6	ATLANTIC	4,930	5,017	5,329	5,372
Linwood City	6	ATLANTIC	2,800	2,818	3,098	2,876
Longport Borough	6	ATLANTIC	1,574	1,574	1,641	1,584
Margate City	6	ATLANTIC	7,085	7,085	7,400	7,131

Mullica Township	6	ATLANTIC	2,195	2,245	2,450	2,387
Northfield City	6	ATLANTIC	2,973	3,001	3,103	3,046
Pleasantville City	6	ATLANTIC	7,038	7,042	6,768	7,123
Port Republic City	6	ATLANTIC	397	405	433	439
Somers Point City	6	ATLANTIC	5,360	5,375	5,280	5,377
Ventnor City	6	ATLANTIC	7,969	7,969	8,263	8,012
Weymouth Township	6	ATLANTIC	921	948	1,072	1,021
Allendale Borough	1	BERGEN	2,169	2,203	2,468	2,254
Alpine Borough	1	BERGEN	758	795	965	829
Bergenfield Borough	1	BERGEN	9,126	9,149	9,103	9,146
Bogota Borough	1	BERGEN	2,903	2,912	2,955	2,920
Carlstadt Borough	1	BERGEN	2,491	2,492	2,547	2,500
Cliffside Park Borough	1	BERGEN	10,359	10,376	10,668	10,423
Closter Borough	1	BERGEN	2,894	2,911	3,027	2,933
Cresskill Borough	1	BERGEN	2,741	2,764	2,887	2,789
Demarest Borough	1	BERGEN	1,650	1,668	1,703	1,684
Dumont Borough	1	BERGEN	6,471	6,497	6,612	6,520
East Rugherford Borough	1	BERGEN	3,773	3,787	3,760	3,786
Edgewater Borough	1	BERGEN	5,147	5,235	10,461	5,711
Elmwood Park	1	BERGEN	7,246	7,304	7,453	7,341

Borough						
Emerson Borough	1	BERGEN	2,418	2,458	2,580	2,502
Englewood City	1	BERGEN	9,595	9,661	9,710	9,684
Englewood Cliffs Borough	1	BERGEN	1,942	1,969	2,059	1,993
Fair Lawn Borough	1	BERGEN	11,987	12,034	12,199	12,069
Fairview Borough	1	BERGEN	5,032	5,051	4,965	5,041
Fort Lee Borough	1	BERGEN	18,174	18,334	19,373	18,540
Franklin Lakes Borough	1	BERGEN	3,601	3,686	4,115	3,817
Garfield City	1	BERGEN	11,695	11,723	11,790	11,738
Glen Rock Borough	1	BERGEN	4,015	4,031	4,049	4,037
Hackensack City	1	BERGEN	19,326	19,392	20,353	19,553
Harrington Park Borough	1	BERGEN	1,589	1,611	1,650	1,629
Hasbrouck Heights Borough	1	BERGEN	4,608	4,624	4,680	4,636
Haworth Borough	1	BERGEN	1,151	1,163	1,179	1,187
Hillsdale Borough	1	BERGEN	3,549	3,592	3,690	3,625
Ho-Ho-Kus Borough	1	BERGEN	1,470	1,483	1,498	1,492
Leonia Borough	1	BERGEN	3,333	3,347	3,342	3,349
Little Ferry Borough	1	BERGEN	4,450	4,466	4,429	4,464
Lodi Borough	1	BERGEN	9,966	10,011	10,326	10,069
Lyndhurst Township	1	BERGEN	8,112	8,117	8,344	8,152
Mahwah	1	BERGEN	9,716	9,996	11,619	10,354

Township						
Maywood Borough	1	BERGEN	3,768	3,783	3,760	3,783
Midland Park Borough	1	BERGEN	2,645	2,658	2,690	2,665
Montvale Borough	1	BERGEN	2,677	2,727	2,952	2,828
Moonachie Borough	1	BERGEN	1,085	1,088	1,080	1,087
New Milford Borough	1	BERGEN	6,421	6,438	6,462	6,444
North Arlington Borough	1	BERGEN	6,541	6,558	6,602	6,568
Northvale Borough	1	BERGEN	1,620	1,623	1,681	1,632
Norwood Borough	1	BERGEN	2,014	2,035	2,443	2,102
Oakland Borough	1	BERGEN	4,625	4,702	5,321	4,822
Old Tappan Borough	1	BERGEN	1,873	1,919	2,651	2,025
Oradell Borough	1	BERGEN	2,830	2,852	2,852	2,872
Palisades Park Borough	1	BERGEN	6,661	6,694	7,287	6,794
Paramus Borough	1	BERGEN	8,365	8,461	8,974	8,570
Park Ridge Borough	1	BERGEN	3,295	3,321	3,531	3,361
Ramsey Borough	1	BERGEN	5,461	5,557	5,976	5,661
Ridgefield Borough	1	BERGEN	4,156	4,168	4,180	4,172
Ridgefield Park Village	1	BERGEN	5,117	5,156	5,117	5,184
Ridgewood Village	1	BERGEN	8,778	8,823	8,881	8,841
River Edge	1	BERGEN	4,213	4,227	4,278	4,237

Borough						
River Vale Township	1	BERGEN	3,411	3,449	3,621	3,487
Rochelle Park Township	1	BERGEN	2,109	2,118	2,126	2,121
Rockleigh Borough	1	BERGEN	81	85	98	91
Rutherford Borough	1	BERGEN	7,189	7,217	7,243	7,226
Saddle Brook Township	1	BERGEN	5,161	5,185	5,304	5,209
Saddle River Borough	1	BERGEN	1,333	1,380	1,701	1,459
South Hackensack Township	1	BERGEN	844	846	899	854
Teaneck Township	1	BERGEN	13,668	13,749	13,929	13,795
Tenafly Borough	1	BERGEN	4,947	4,989	5,009	5,005
Teterboro Borough	1	BERGEN	8	7	4	8
Upper Saddle River Borough	1	BERGEN	2,676	2,724	2,941	2,779
Waldwick Borough	1	BERGEN	3,486	3,516	3,587	3,534
Wallington Borough	1	BERGEN	4,892	4,923	4,893	4,925
Washington Township	1	BERGEN	3,396	3,445	3,628	3,488
Westwood Borough	1	BERGEN	4,618	4,634	4,796	4,662
Woodcliff Lake Borough	1	BERGEN	1,872	1,926	2,258	2,001
Wood-Ridge	1	BERGEN	3,085	3,117	3,160	3,133

Borough						
Wyckoff Township	1	BERGEN	5,761	5,843	6,255	5,932
Bass River Township	5	BURLINGTON	611	618	640	681
Beverly City	5	BURLINGTON	1,047	1,053	1,037	1,057
Bordentown City	5	BURLINGTON	1,903	1,918	1,915	1,953
Bordentown Township	5	BURLINGTON	3,890	4,026	5,288	4,336
Burlington City	5	BURLINGTON	4,199	4,245	4,349	4,368
Burlington Township	5	BURLINGTON	7,748	8,100	12,337	8,721
Chesterfield Township	5	BURLINGTON	933	943	968	1,063
Cinnaminson Township	5	BURLINGTON	5,233	5,303	5,583	5,422
Delanco Township	5	BURLINGTON	1,318	1,342	1,493	1,447
Delran Township	5	BURLINGTON	6,143	6,287	8,091	6,655
Eastampton Township	5	BURLINGTON	2,454	2,494	2,701	2,638
Edgewater Park Township	5	BURLINGTON	3,317	3,354	3,451	3,545
Evesham Township	5	BURLINGTON	17,234	17,453	21,672	18,237
Fieldsboro Borough	5	BURLINGTON	216	220	306	234
Florence Township	5	BURLINGTON	4,563	4,664	5,379	5,094
Hainesport Township	5	BURLINGTON	1,973	2,046	2,983	2,198
Lumberton Township	5	BURLINGTON	4,542	4,714	6,890	5,066

Mansfield Township	5	BURLINGTON	2,895	3,055	6,171	3,312
Maple Shade Township	5	BURLINGTON	9,041	9,091	9,070	9,139
Medford Lakes Borough	5	BURLINGTON	1,558	1,559	1,553	1,559
Medford Township	5	BURLINGTON	8,446	8,630	9,888	9,064
Moorestown Township	5	BURLINGTON	7,462	7,653	9,155	8,048
Mount Holly Township	5	BURLINGTON	4,245	4,294	4,744	4,411
Mount Laurel Township	5	BURLINGTON	17,277	17,707	21,673	18,653
New Hanover Township	5	BURLINGTON	1,347	1,361	1,832	1,432
North Hanover Township	5	BURLINGTON	2,707	2,702	2,429	2,821
Palmyra Borough	5	BURLINGTON	3,451	3,498	3,879	3,603
Pemberton Borough	5	BURLINGTON	520	525	525	544
Pemberton Township	5	BURLINGTON	10,789	10,922	11,227	11,269
Riverside Township	5	BURLINGTON	3,123	3,130	3,094	3,133
Riverton Borough	5	BURLINGTON	1,111	1,114	1,137	1,122
Shamong Township	5	BURLINGTON	2,229	2,268	2,642	2,362
Southampton Township	5	BURLINGTON	4,898	4,967	5,262	5,097
Springfield Township	5	BURLINGTON	1,207	1,232	1,401	1,378

Tabernacle Township	5	BURLINGTON	2,415	2,447	2,572	2,593
Washington Township	5	BURLINGTON	174	171	131	180
Westampton Township	5	BURLINGTON	2,700	2,780	3,452	3,066
Willingboro Township	5	BURLINGTON	11,129	11,205	11,077	11,266
Woodland Township	5	BURLINGTON	511	528	687	587
Wrightstown Borough	5	BURLINGTON	339	322	177	339
Audubon Borough	5	CAMDEN	3,793	3,796	3,727	3,793
Audubon Park Borough	5	CAMDEN	496	498	497	505
Barrington Borough	5	CAMDEN	3,159	3,192	3,527	3,276
Bellmawr Borough	5	CAMDEN	4,553	4,545	4,385	4,623
Berlin Borough	5	CAMDEN	2,501	2,574	3,026	2,705
Berlin Township	5	CAMDEN	2,024	2,059	2,243	2,166
Brooklawn Borough	5	CAMDEN	1,021	1,023	1,279	1,060
Camden City	5	CAMDEN	29,683	29,725	29,273	30,043
Cherry Hill Township	5	CAMDEN	27,199	27,448	28,576	27,882
Chesilhurst Borough	5	CAMDEN	584	599	693	650
Clementon Borough	5	CAMDEN	2,201	2,188	2,058	2,229
Collingswood Borough	5	CAMDEN	6,833	6,844	6,857	6,855
Gibbsboro	5	CAMDEN	858	878	990	945

Borough						
Gloucester City	5	CAMDEN	4,587	4,569	4,345	4,605
Gloucester Township	5	CAMDEN	24,773	25,388	29,018	26,750
Haddon Heights Borough	5	CAMDEN	3,121	3,128	3,097	3,136
Haddon Township	5	CAMDEN	6,426	6,436	6,503	6,455
Haddonfield Borough	5	CAMDEN	4,614	4,624	4,684	4,641
Hi-Nella Borough	5	CAMDEN	494	496	498	513
Laurel Springs Borough	5	CAMDEN	803	799	757	803
Lawnside Borough	5	CAMDEN	1,114	1,126	1,176	1,208
Lindenwold Borough	5	CAMDEN	8,229	8,227	8,019	8,323
Magnolia Borough	5	CAMDEN	1,838	1,838	1,796	1,849
Merchantville Borough	5	CAMDEN	1,612	1,612	1,606	1,612
Mount Ephraim Borough	5	CAMDEN	1,880	1,882	1,874	1,882
Oaklyn Borough	5	CAMDEN	1,883	1,884	1,881	1,884
Pennsauken Township	5	CAMDEN	12,946	13,032	13,266	13,189
Pine Hill Borough	5	CAMDEN	4,472	4,573	5,151	4,839
Pine Valley Borough	5	CAMDEN	23	24	31	27
Runnemede Borough	5	CAMDEN	3,508	3,524	3,542	3,556
Somerdale	5	CAMDEN	2,166	2,170	2,142	2,194

Borough						
Stratford Borough	5	CAMDEN	2,841	2,845	2,800	2,851
Tavistock Borough	5	CAMDEN	7	7	10	8
Voorhees Township	5	CAMDEN	11,237	11,439	12,716	11,840
Waterford Township	5	CAMDEN	3,719	3,769	4,005	3,932
Winslow Township	5	CAMDEN	12,544	12,822	14,413	13,884
Woodlynne Borough	5	CAMDEN	1,007	1,007	1,006	1,007
Avalon Borough	6	CAPE MAY	5,301	5,298	5,221	5,301
Cape May City	6	CAPE MAY	3,969	3,964	4,053	3,983
Cape May Point Borough	6	CAPE MAY	503	503	446	503
Dennis Township	6	CAPE MAY	2,289	2,286	2,562	2,510
Lower Township	6	CAPE MAY	13,704	13,687	14,192	13,932
Middle Township	6	CAPE MAY	7,597	7,587	8,029	8,040
North Wildwood City	6	CAPE MAY	7,357	7,347	7,427	7,367
Ocean City	6	CAPE MAY	20,518	20,492	21,791	20,705
Sea Isle City	6	CAPE MAY	6,874	6,865	7,569	6,976
Stone Harbor Borough	6	CAPE MAY	3,385	3,381	3,503	3,402
Upper Township	6	CAPE MAY	5,407	5,400	5,485	5,758
West Cape May Borough	6	CAPE MAY	1,008	1,006	1,089	1,027
West Wildwood	6	CAPE MAY	754	753	719	754

Borough						
Wildwood City	6	CAPE MAY	6,313	6,304	6,271	6,313
Wildwood Crest Borough	6	CAPE MAY	4,764	4,758	4,734	4,764
Woodbine Borough	6	CAPE MAY	1,058	1,057	1,204	1,166
Bridgeton City	6	CUMBERLAND	6,776	6,789	6,693	7,047
Commercial Township	6	CUMBERLAND	2,185	2,212	2,359	2,412
Deerfield Township	6	CUMBERLAND	1,101	1,127	1,309	1,273
Downe Township	6	CUMBERLAND	1,140	1,150	1,198	1,240
Fairfield Township	6	CUMBERLAND	1,996	2,005	2,015	2,279
Greenwich Township	6	CUMBERLAND	360	365	393	413
Hopewell Township	6	CUMBERLAND	1,730	1,771	2,056	1,995
Lawrence Township	6	CUMBERLAND	1,039	1,064	1,237	1,199
Maurice River Township	6	CUMBERLAND	1,595	1,630	1,864	1,796
Millville City	6	CUMBERLAND	10,711	10,840	11,535	12,264
Shiloh Borough	6	CUMBERLAND	219	221	234	246
Stow Creek Township	6	CUMBERLAND	574	586	663	664
Upper Deerfield Township	6	CUMBERLAND	2,909	2,958	3,266	3,342
Vineland City	6	CUMBERLAND	21,008	21,299	22,962	23,662
Belleville Township	2	ESSEX	14,081	14,124	14,148	14,169
Bloomfield	2	ESSEX	19,385	19,457	19,542	19,542

Township						
Caldwell Borough	2	ESSEX	3,417	3,436	3,505	3,467
Cedar Grove Township	2	ESSEX	4,473	4,565	4,772	4,736
City Of Orange Township	2	ESSEX	12,604	12,630	12,785	12,677
East Orange City	2	ESSEX	28,374	28,439	27,827	28,419
Essex Fells Borough	2	ESSEX	757	772	780	805
Fairfield Township	2	ESSEX	2,446	2,462	2,633	2,504
Glen Ridge Borough	2	ESSEX	2,473	2,477	2,482	2,482
Irvington Township	2	ESSEX	23,990	24,024	23,770	24,023
Livingston Township	2	ESSEX	9,553	9,653	10,275	9,854
Maplewood Township	2	ESSEX	8,564	8,583	8,856	8,644
Millburn Township	2	ESSEX	7,147	7,198	7,221	7,254
Montclair Township	2	ESSEX	15,403	15,450	15,652	15,525
Newark City	2	ESSEX	101,196	101,807	100,984	102,459
North Caldwell Borough	2	ESSEX	2,111	2,146	2,166	2,204
Nutley Township	2	ESSEX	11,413	11,447	11,855	11,538
Roseland Borough	2	ESSEX	2,189	2,236	2,626	2,338
South Orange Village	2	ESSEX	5,665	5,581	5,811	5,734

Township						
Verona Township	2	ESSEX	5,693	5,745	5,726	5,797
West Caldwell Township	2	ESSEX	4,034	4,080	4,328	4,167
West Orange Township	2	ESSEX	17,013	17,366	17,778	17,806
Clayton Borough	5	GLOUCESTER	2,688	2,756	3,243	2,978
Deptford Township	5	GLOUCESTER	10,935	11,220	13,257	12,097
East Greenwich Township	5	GLOUCESTER	2,070	2,124	2,504	2,334
Elk Township	5	GLOUCESTER	1,360	1,379	1,460	1,558
Franklin Township	5	GLOUCESTER	5,590	5,716	6,548	6,316
Glassboro Borough	5	GLOUCESTER	6,573	6,696	7,409	7,090
Greenwich Township	5	GLOUCESTER	1,994	2,012	2,113	2,047
Harrison Township	5	GLOUCESTER	3,311	3,509	5,566	3,786
Logan Township	5	GLOUCESTER	2,075	2,127	2,487	2,350
Mantua Township	5	GLOUCESTER	5,502	5,709	7,462	6,287
Monroe Township	5	GLOUCESTER	11,282	11,552	13,389	12,576q
National Park Borough	5	GLOUCESTER	1,162	1,173	1,188	1,194
Newfield Borough	5	GLOUCESTER	624	631	655	647
Paulsboro Borough	5	GLOUCESTER	2,622	2,639	2,665	2,662
Pitman Borough	5	GLOUCESTER	3,640	3,677	3,772	3,730

South Harrison Township	5	GLOUCESTER	910	946	1,252	1,044
Swedesboro Borough	5	GLOUCESTER	862	875	937	907
Washington Township	5	GLOUCESTER	16,869	17,240	20,156	18,026
Wenonah Borough	5	GLOUCESTER	857	866	889	891
West Deptford Township	5	GLOUCESTER	8,163	8,278	8,795	8,793
Westville Borough	5	GLOUCESTER	1,932	1,940	1,890	1,949
Woodbury City	5	GLOUCESTER	4,381	4,388	4,449	4,403
Woodbury Heights Borough	5	GLOUCESTER	1,050	1,056	1,043	1,074
Woolwich Township	5	GLOUCESTER	1,546	1,742	6,633	1,787
Bayonne City	1	HUDSON	26,631	26,707	26,945	27,067
East Newark Borough	1	HUDSON	791	792	806	794
Guttenberg Town	1	HUDSON	4,752	4,753	5,034	4,794
Harrison Town	1	HUDSON	5,221	5,239	5,337	5,299
Hoboken City	1	HUDSON	20,364	20,403	22,147	20,674
Jersey City	1	HUDSON	93,424	93,794	96,093	94,834
Kearny Town	1	HUDSON	13,759	13,793	14,281	13,892
North Bergen Township	1	HUDSON	22,299	22,418	23,507	22,697
Secaucus Town	1	HUDSON	6,346	6,358	6,314	6,375
Union City	1	HUDSON	23,602	23,661	24,008	23,768
Weehawken Township	1	HUDSON	6,093	6,129	6,415	6,256
West New York Town	1	HUDSON	17,725	17,770	19,742	18,077
Alexandria	3	HUNTERDON	1,661	1,707	2,089	1,894

Township						
Bethlehem Township	3	HUNTERDON	1,349	1,376	1,740	1,449
Bloomsbury Borough	3	HUNTERDON	345	347	346	350
Califon Borough	3	HUNTERDON	412	415	417	418
Clinton Town	3	HUNTERDON	1,104	1,124	1,540	1,193
Clinton Township	3	HUNTERDON	4,433	4,559	5,573	4,943
Delaware Township	3	HUNTERDON	1,754	1,779	1,922	2,014
East Amwell Township	3	HUNTERDON	1,655	1,683	1,856	1,884
Flemingt Borough	3	HUNTERDON	1,891	1,898	1,880	1,904
Franklin Township	3	HUNTERDON	1,174	1,195	1,328	1,353
Frenchtown Borough	3	HUNTERDON	641	644	640	660
Glen Gardner Borough	3	HUNTERDON	860	862	919	873
Hampton Borough	3	HUNTERDON	586	581	507	586
High Bridge Borough	3	HUNTERDON	1,493	1,506	1,539	1,557
Holland Township	3	HUNTERDON	1,984	2,016	2,217	2,211
Kingwood Township	3	HUNTERDON	1,475	1,513	1,826	1,704
Lambertville City	3	HUNTERDON	1,970	1,993	2,100	2,098
Lebanon Borough	3	HUNTERDON	508	509	492	514
Lebanon Township	3	HUNTERDON	2,117	2,141	2,241	2,184

Milford Borough	3	HUNTERDON	487	488	472	501
Raritan Township	3	HUNTERDON	7,593	7,800	9,515	8,458
Readington Township	3	HUNTERDON	5,994	6,160	7,553	6,741
Stockton Borough	3	HUNTERDON	260	262	262	271
Tewksbury Township	3	HUNTERDON	2,142	2,193	2,592	2,397
Union Township	3	HUNTERDON	1,778	1,821	2,156	1,928
West Amwell Township	3	HUNTERDON	1,077	1,109	1,388	1,243
East Windsor Township	4	MERCER	10,456	10,684	12,502	11,311
Ewing Township	4	MERCER	13,012	13,100	13,514	13,718
Hamilton Township	4	MERCER	35,014	35,273	36,579	36,070
Hightstown Borough	4	MERCER	2,102	2,104	2,067	2,124
Hopewell Borough	4	MERCER	837	841	849	859
Hopewell Township	4	MERCER	5,770	6,054	8,916	6,600
Lawrence Township	4	MERCER	11,645	11,899	13,927	12,535
Pennington Borough	4	MERCER	1,042	1,053	1,153	1,079
Princeton Borough	4	MERCER	3,333	3,311	3,045	3,333
Princeton Township	4	MERCER	6,657	6,800	7,943	7,220
Trenton City	4	MERCER	33,771	33,893	34,035	34,126
Washington	4	MERCER	4,364	4,577	6,710	4,938

Township						
West Windsor Township	4	MERCER	7,934	8,152	10,002	8,700
Carteret Borough	3	MIDDLESEX	7,578	7,633	8,280	7,784
Cranbury Township	3	MIDDLESEX	1,161	1,189	1,461	1,304
Dunellen Borough	3	MIDDLESEX	2,547	2,548	2,595	2,556
East Brunswick Township	3	MIDDLESEX	16,997	17,215	18,911	17,842
Edison Township	3	MIDDLESEX	36,555	36,965	40,045	37,860
Helmetta Borough	3	MIDDLESEX	798	806	1,012	842
Highland Park Borough	3	MIDDLESEX	6,123	6,146	6,151	6,242
Jamesburg Borough	3	MIDDLESEX	2,360	2,375	2,515	2,412
Metuchen Borough	3	MIDDLESEX	5,221	5,255	5,399	5,319
Middlesex Borough	3	MIDDLESEX	5,185	5,206	5,365	5,248
Milltown Borough	3	MIDDLESEX	2,714	2,729	2,854	2,763
Monroe Township	3	MIDDLESEX	14,282	14,800	20,685	16,106
New Brunswick City	3	MIDDLESEX	13,944	14,012	14,178	14,333
North Brunswick Township	3	MIDDLESEX	14,669	14,930	17,272	15,622
Old Bridge Township	3	MIDDLESEX	22,685	22,946	24,867	24,059
Perth Amboy	3	MIDDLESEX	15,393	15,466	15,618	15,730

City						
Piscataway Township	3	MIDDLESEX	17,257	17,528	19,822	18,402
Plainsboro Township	3	MIDDLESEX	9,432	9,645	11,725	10,344
Sayreville Borough	3	MIDDLESEX	15,649	15,904	18,109	16,888
South Amboy City	3	MIDDLESEX	3,134	3,156	3,268	3,240
South Brunswick Township	3	MIDDLESEX	14,552	15,069	20,919	16,331
South Plainfield Borough	3	MIDDLESEX	7,610	7,657	8,395	7,810
South River Borough	3	MIDDLESEX	5,915	5,967	6,596	6,112
Spotswood Borough	3	MIDDLESEX	3,236	3,263	3,421	3,324
Woodbridge Township	3	MIDDLESEX	36,171	36,449	37,934	37,139
Aberdeen Township	4	MONMOUTH	6,553	6,607	6,914	6,759
Allenhurst Borough	4	MONMOUTH	369	369	357	369
Allentown Borough	4	MONMOUTH	716	721	782	735
Asbury Park City	4	MONMOUTH	7,711	7,731	7,690	7,746
Atlantic Highlands Borough	4	MONMOUTH	2,049	2,064	2,129	2,092
Avon-By-The-Sea Borough	4	MONMOUTH	1,381	1,382	1,388	1,383
Belmar Borough	4	MONMOUTH	3,995	3,996	4,069	4,008

Bradley Beach Borough	4	MONMOUTH	3,142	3,147	3,082	3,142
Brielle Borough	4	MONMOUTH	2,126	2,141	2,246	2,172
Colts Neck Township	4	MONMOUTH	3,371	3,436	4,135	3,720
Deal Borough	4	MONMOUTH	947	949	915	947
Eatontown Borough	4	MONMOUTH	6,352	6,403	6,684	6,582
Englishtown Borough	4	MONMOUTH	699	708	962	747
Fair Haven Borough	4	MONMOUTH	2,042	2,043	2,042	2,044
Farmingdale Borough	4	MONMOUTH	638	639	638	640
Freehold Borough	4	MONMOUTH	4,015	4,030	4,027	4,044
Freehold Township	4	MONMOUTH	11,645	11,893	14,692	12,805
Hazlet Township	4	MONMOUTH	7,368	7,408	7,458	7,494
Highlands Borough	4	MONMOUTH	2,798	2,809	2,772	2,846
Holmdel Township	4	MONMOUTH	5,390	5,517	8,309	5,926
Howell Township	4	MONMOUTH	16,877	17,234	21,231	18,911
Interlaken Borough	4	MONMOUTH	396	396	400	396
Keansburg Borough	4	MONMOUTH	4,267	4,269	4,277	4,271
Keyport Borough	4	MONMOUTH	3,396	3,408	3,408	3,419
Lake Como Borough	4	MONMOUTH	1,103	1,103	1,041	1,103

Little Silver Borough	4	MONMOUTH	2,292	2,299	2,460	2,327
Loch Arbour Village	4	MONMOUTH	155	155	170	158
Long Branch City	4	MONMOUTH	14,022	14,081	13,985	14,139
Manalapan Township	4	MONMOUTH	11,995	12,244	14,953	12,968
Manasquan Borough	4	MONMOUTH	3,525	3,528	3,671	3,549
Marlboro Township	4	MONMOUTH	12,588	12,974	18,186	13,886
Matawan Borough	4	MONMOUTH	3,648	3,663	3,632	3,691
Middletown Township	4	MONMOUTH	24,337	24,503	25,165	24,981
Millstone Township	4	MONMOUTH	2,950	3,049	4,390	3,369
Monmouth Beach Borough	4	MONMOUTH	1,978	1,978	2,018	1,984
Neptune City Borough	4	MONMOUTH	2,340	2,346	2,348	2,353
Neptune Township	4	MONMOUTH	12,386	12,493	13,115	12,800
Ocean Township	4	MONMOUTH	10,819	10,921	11,584	11,181
Oceanport Borough	4	MONMOUTH	2,120	2,136	2,188	2,189
Red Bank Borough	4	MONMOUTH	5,467	5,476	5,546	5,495
Roosevelt Borough	4	MONMOUTH	350	352	364	367
Rumson Borough	4	MONMOUTH	2,595	2,604	2,598	2,613
Sea Bright Borough	4	MONMOUTH	1,202	1,202	1,169	1,202
Sea Girt	4	MONMOUTH	1,273	1,279	1,275	1,288

Borough						
Shrewsbury Borough	4	MONMOUTH	1,249	1,256	1,350	1,276
Shrewsbury Township	4	MONMOUTH	544	545	540	546
Spring Lake Borough	4	MONMOUTH	1,921	1,922	1,924	1,922
Spring Lake Heights Borough	4	MONMOUTH	2,943	2,952	2,940	2,959
Tinton Falls Borough	4	MONMOUTH	6,400	6,559	8,463	7,047
Union Beach Borough	4	MONMOUTH	2,264	2,272	2,461	2,306
Upper Freehold Township	4	MONMOUTH	1,866	1,949	3,215	2,155
Wall Township	4	MONMOUTH	10,302	10,560	13,578	11,442
West Long Branch Borough	4	MONMOUTH	2,533	2,544	2,527	2,555
Boonton Town	2	MORRIS	3,326	3,363	3,417	3,416
Boonton Township	2	MORRIS	1,520	1,553	1,744	1,637
Butler Borough	2	MORRIS	3,192	3,222	3,633	3,311
Chatham Borough	2	MORRIS	3,214	3,226	3,279	3,246
Chatham Township	2	MORRIS	4,005	4,052	4,145	4,167
Chester Borough	2	MORRIS	632	640	733	661
Chester Township	2	MORRIS	2,468	2,520	3,148	2,654
Denville Township	2	MORRIS	6,203	6,383	7,641	6,739
Dover Town	2	MORRIS	5,547	5,573	5,495	5,588

East Hanover Township	2	MORRIS	3,910	3,956	4,775	4,116
Florham Park Borough	2	MORRIS	4,623	4,731	7,541	5,105
Hanover Township	2	MORRIS	4,824	4,915	5,809	5,134
Harding Township	2	MORRIS	1,260	1,265	1,209	1,386
Jefferson Township	2	MORRIS	7,594	7,705	8,212	7,902
Kinnelon Borough	2	MORRIS	3,151	3,177	3,463	3,246
Lincoln Park Borough	2	MORRIS	4,088	4,137	4,201	4,237
Long Hill Township	2	MORRIS	3,199	3,241	3,507	3,325
Madison Borough	2	MORRIS	5,240	5,266	5,056	5,426
Mendham Borough	2	MORRIS	1,832	1,856	1,914	1,924
Mendham Township	2	MORRIS	1,906	1,947	2,178	2,136
Mine Hill Township	2	MORRIS	1,388	1,415	1,641	1,474
Montville Township	2	MORRIS	7,625	7,772	10,399	8,238
Morris Plains Borough	2	MORRIS	1,988	2,010	2,035	2,056
Morris Township	2	MORRIS	8,121	8,267	8,857	8,606
Morristown Town	2	MORRIS	7,735	7,794	8,414	7,945
Mount Arlington Borough	2	MORRIS	2,176	2,233	3,247	2,394
Mount Olive Township	2	MORRIS	9,627	9,778	10,995	10,116

Mountain Lakes Borough	2	MORRIS	1,365	1,383	1,432	1,411
Netcong Borough	2	MORRIS	1,330	1,337	1,475	1,363
Parsippany-Troy Hills Township	2	MORRIS	20,175	20,492	21,680	21,295
Pequannock Township	2	MORRIS	5,185	5,219	5,973	5,358
Randolph Township	2	MORRIS	9,129	9,353	11,263	9,833
Riverdale Borough	2	MORRIS	955	976	1,074	1,027
Rockaway Borough	2	MORRIS	2,475	2,499	2,639	2,546
Rockaway Township	2	MORRIS	9,082	9,334	10,899	9,800
Roxbury Township	2	MORRIS	8,489	8,719	10,273	9,156
Victory Gardens Borough	2	MORRIS	583	585	611	592
Washington Township	2	MORRIS	6,071	6,155	6,946	6,359
Wharton Borough	2	MORRIS	2,372	2,402	2,657	2,472
Barnegat Light Borough	4	OCEAN	1,248	1,248	1,358	1,264
Barnegat Township	4	OCEAN	6,509	6,733	8,459	7,362
Bay Head Borough	4	OCEAN	1,068	1,069	1,176	1,085
Beach Haven Borough	4	OCEAN	2,613	2,607	2,398	2,613
Beachwood Borough	4	OCEAN	3,713	3,785	4,204	3,940
Berkeley	4	OCEAN	23,416	23,992	27,452	25,158

Township						
Brick Township	4	OCEAN	33,449	33,816	38,248	34,839
Eagleswood Township	4	OCEAN	719	731	789	798
Harvey Cedars Borough	4	OCEAN	1,239	1,239	1,264	1,242
Island Heights Borough	4	OCEAN	832	837	982	860
Jackson Township	4	OCEAN	16,257	16,879	21,976	18,235
Lacey Township	4	OCEAN	10,939	11,168	12,559	11,748
Lakehurst Borough	4	OCEAN	1,022	1,025	990	1,037
Lakewood Township	4	OCEAN	22,948	23,653	28,901	25,329
Lavallette Borough	4	OCEAN	3,250	3,250	3,404	3,272
Little Egg Harbor Township	4	OCEAN	8,814	9,091	11,130	9,786
Long Beach Township	4	OCEAN	9,194	9,194	9,437	9,229
Manchester Township	4	OCEAN	24,080	24,654	28,407	26,294
Mantoloking Borough	4	OCEAN	544	544	553	545
Ocean Gate Borough	4	OCEAN	1,165	1,165	1,230	1,175
Ocean Township	4	OCEAN	3,111	3,178	3,577	3,500
Pine Beach Borough	4	OCEAN	890	895	917	903
Plumsted Township	4	OCEAN	2,854	2,948	3,588	3,129
Point Pleasant Beach Borough	4	OCEAN	3,606	3,610	4,003	3,669

Point Pleasant Borough	4	OCEAN	8,494	8,504	8,846	8,558
Seaside Heights Borough	4	OCEAN	2,856	2,861	2,804	2,856
Seaside Park Borough	4	OCEAN	2,847	2,849	3,162	2,895
Ship Bottom Borough	4	OCEAN	2,252	2,252	2,240	2,252
South Toms River Borough	4	OCEAN	1,135	1,145	1,163	1,172
Stafford Township	4	OCEAN	12,230	12,679	18,322	13,616
Surf City Borough	4	OCEAN	2,694	2,694	3,891	2,845
Toms River Township	4	OCEAN	42,572	43,620	50,602	45,649
Tuckerton Borough	4	OCEAN	1,999	2,014	2,019	2,081
Bloomingdale Borough	1	PASSAIC	2,972	3,011	3,077	3,087
Clifton City	1	PASSAIC	31,447	31,868	32,731	32,122
Haledon Borough	1	PASSAIC	2,952	2,995	3,102	3,096
Hawthorne Borough	1	PASSAIC	7,477	7,576	7,780	7,636
Little Falls Township	1	PASSAIC	5,275	5,351	6,224	5,507
North Haledon Borough	1	PASSAIC	2,714	2,778	2,991	2,831
Passaic City	1	PASSAIC	20,388	20,464	20,577	20,496
Paterson City	1	PASSAIC	47,697	47,351	45,859	47,697
Pompton Lakes Borough	1	PASSAIC	4,123	4,176	04,260	4,240
Prospect Park Borough	1	PASSAIC	1,901	1,920	1,920	1,931

Ringwood Borough	1	PASSAIC	4,302	4,331	4,484	4,362
Totowa Borough	1	PASSAIC	3,674	3,732	3,883	3,864
Wanaque Borough	1	PASSAIC	3,538	3,610	3,788	3,688
Wayne Township	1	PASSAIC	19,543	20,150	22,611	20,700
West Milford Township	1	PASSAIC	10,369	10,458	11,343	10,622
West Paterson Borough	1	PASSAIC	4,585	4,652	4,814	4,822
Alloway Township	6	SALEM	1,021	1,032	1,068	1,176
Carneys Point Township	6	SALEM	3,310	3,356	3,507	3,707
Elmer Borough	6	SALEM	555	555	547	563
Elsinboro Township	6	SALEM	528	529	523	542
Lower Alloways Creek Township	6	SALEM	741	763	880	826
Mannington Township	6	SALEM	565	575	612	654
Oldmans Township	6	SALEM	697	711	792	797
Penns Grove Borough	6	SALEM	2,058	2,060	2,032	2,068
Pennsville Township	6	SALEM	5,622	5,665	5,822	5,831
Pilesgrove Township	6	SALEM	1,298	1,333	1,528	1,498
Pittsgrove Township	6	SALEM	3,215	3,299	3,746	3,649
Quinton Township	6	SALEM	1,141	1,156	1,222	1,300
Salem City	6	SALEM	2,839	2,850	2,849	2,941

Upper Pittsgrove Township	6	SALEM	1,280	1,308	1,475	1,475
Woodstown Borough	6	SALEM	1,446	1,464	1,552	1,546
Bedminster Township	3	SOMERSET	4,452	4,530	4,961	4,881
Bernards Township	3	SOMERSET	10,062	10,225	14,501	10,879
Bernardsville Borough	3	SOMERSET	2,860	2,914	3,249	3,107
Bound Brook Borough	3	SOMERSET	3,771	3,776	3,698	3,771
Branchburg Township	3	SOMERSET	5,454	5,597	6,924	5,984
Bridgewater Township	3	SOMERSET	16,142	16,478	21,135	17,404
Far Hills Borough	3	SOMERSET	400	417	625	461
Franklin Township	3	SOMERSET	21,000	21,412	24,257	22,404
Green Brook Township	3	SOMERSET	2,213	2,246	3,523	2,410
Hillsborough Township	3	SOMERSET	13,093	13,399	15,960	14,341
Manville Borough	3	SOMERSET	4,286	4,298	4,361	4,319
Millstone Borough	3	SOMERSET	173	175	184	178
Montgomery Township	3	SOMERSET	7,053	7,329	17,664	8,050
North Plainfield Borough	3	SOMERSET	7,516	7,535	7,262	7,516

Peapack-Gladstone Borough	3	SOMERSET	874	890	989	983
Raritan Borough	3	SOMERSET	2,629	2,674	2,919	2,762
Rocky Hill Borough	3	SOMERSET	293	296	300	306
Somerville Borough	3	SOMERSET	4,843	4,867	4,803	4,881
South Bound Brook Borough	3	SOMERSET	1,664	1,666	1,633	1,664
Warren Township	3	SOMERSET	4,968	5,155	7,325	5,529
Watchung Borough	3	SOMERSET	2,060	2,077	2,011	2,189
Andover Borough	1	SUSSEX	274	275	272	307
Andover Township	1	SUSSEX	2,063	2,116	2,423	2,351
Branchville Borough	1	SUSSEX	377	377	362	381
Byram Township	1	SUSSEX	3,170	3,223	3,461	3,347
Frankford Township	1	SUSSEX	2,352	2,404	2,688	2,706
Franklin Borough	1	SUSSEX	2,012	2,034	2,089	2,140
Fredon Township	1	SUSSEX	1,071	1,094	1,223	1,233
Green Township	1	SUSSEX	1,127	1,165	1,415	1,292
Hamburg Borough	1	SUSSEX	1,347	1,365	1,510	1,405
Hampton Township	1	SUSSEX	2,067	2,100	2,244	2,349
Hardyston Township	1	SUSSEX	3,111	3,232	4,183	3,4411
Hopatcong Borough	1	SUSSEX	6,219	6,271	6,341	6,456

Lafayette Township	1	SUSSEX	833	864	1,073	963
Montague Township	1	SUSSEX	1,629	1,664	1,843	1,869
Newton Town	1	SUSSEX	3,467	3,528	3,816	3,734
Ogdensburg Borough	1	SUSSEX	904	911	924	919
Sandyston Township	1	SUSSEX	922	940	1,031	1,059
Sparta Township	1	SUSSEX	6,825	6,967	8,037	7,265
Stanhope Borough	1	SUSSEX	1,437	1,458	1,538	1,527
Stillwater Township	1	SUSSEX	2,066	2,138	2,620	2,376
Sussex Borough	1	SUSSEX	968	975	979	995
Vernon Township	1	SUSSEX	10,239	10,467	11,709	10,901
Walpack Township	1	SUSSEX	34	34	30	34
Wantage Township	1	SUSSEX	3,833	3,950	4,687	4,416
Berkeley Heights Township	2	UNION	4,621	4,741	5,436	4,928
Clark Township	2	UNION	5,766	5,810	5,937	5,882
Cranford Township	2	UNION	8,613	8,680	8,901	8,758
Elizabeth City	2	UNION	43,729	44,172	45,994	44,612
Fanwood Borough	2	UNION	2,646	2,658	2,770	2,678
Garwood Borough	2	UNION	1,791	1,793	1,827	1,799
Hillside Township	2	UNION	7,444	7,482	7,555	7,501

Kenilworth Borough	2	UNION	2,951	2,971	3,072	2,992
Linden City	2	UNION	15,763	15,927	16,684	16,092
Mountainside Borough	2	UNION	2,502	2,518	2,560	2,550
New Providence Borough	2	UNION	4,523	4,563	4,717	4,617
Plainfield City	2	UNION	16,291	16,338	16,481	16,368
Rahway City	2	UNION	10,514	10,560	10,938	10,628
Roselle Borough	2	UNION	7,949	7,974	8,019	7,986
Roselle Park Borough	2	UNION	5,288	5,300	5,341	5,309
Scotch Plains Township	2	UNION	8,580	8,667	9,366	8,802
Springfield Township	2	UNION	6,328	6,394	6,665	6,537
Summit City	2	UNION	8,206	8,247	8,318	8,354
Union Township	2	UNION	20,357	20,559	21,335	20,744
Westfield Town	2	UNION	10,934	11,027	11,374	11,105
Winfield Township	2	UNION	700	703	708	708
Allamuchy Township	2	WARREN	1,810	1,838	2,047	1,968
Alpha Borough	2	WARREN	1,040	1,056	1,164	1,143
Belvidere Town	2	WARREN	1,173	1,188	1,269	1,260
Blairstown Township	2	WARREN	2,210	2,254	2,646	2,544
Franklin Township	2	WARREN	1,150	1,180	1,495	1,326
Frelinghuysen Township	2	WARREN	773	787	894	894

Greenwich Township	2	WARREN	1,727	1,862	5,607	1,995
Hackettstown Town	2	WARREN	3,906	3,959	4,411	4,081
Hardwick Township	2	WARREN	567	583	753	655
Harmony Township	2	WARREN	1,097	1,114	1,243	1,265
Hope Township	2	WARREN	773	790	956	893
Independence Township	2	WARREN	2,281	2,325	2,706	2,440
Knowlton Township	2	WARREN	1,166	1,190	1,420	1,347
Liberty Township	2	WARREN	1,125	1,144	1,378	1,195
Lopatcong Township	2	WARREN	2,945	3,058	4,496	3,288
Mansfield Township	2	WARREN	2,998	3,037	3,267	3,261
Oxford Township	2	WARREN	1,041	1,073	1,425	1,177
Phillipsburg Town	2	WARREN	6,681	6,733	6,819	7,033
Pohatcong Township	2	WARREN	1,420	1,438	1,550	1,526
Washington Borough	2	WARREN	2,902	2,929	3,021	3,011
Washington Township	2	WARREN	2,237	2,274	2,556	2,499
White Township	2	WARREN	2,036	2,114	3,101	2,340
New Jersey			3,372,928	3,412,981	3,726,970	3,519,452

Municipality	COAH Region	County	Units Allocated 2018	Net Changes 2004-2018	Annual Rate of Change 2004-2018
Absecon City	6	ATLANTIC	3,266	299	0.69%
Atlantic City	6	ATLANTIC	19,927	-125	-0.04%
Brigantine City	6	ATLANTIC	9,332	3	0.00%
Buena Borough	6	ATLANTIC	1,586	42	0.19%
Buena Vista Township	6	ATLANTIC	3,230	341	0.80%
Corbin City	6	ATLANTIC	274	48	1.39%
Egg Harbor City	6	ATLANTIC	1,898	130	0.51%
Egg Harbor Township	6	ATLANTIC	19,192	5,363	2.37%
Estell Manor City	6	ATLANTIC	748	162	1.76%
Folsom Borough	6	ATLANTIC	780	68	0.66%
Galloway Township	6	ATLANTIC	16,955	4,104	2.00%
Hamilton Township	6	ATLANTIC	10,386	1,996	1.54%
Hammonton Town	6	ATLANTIC	5,626	609	0.82%
Linwood City	6	ATLANTIC	2,941	123	0.30%
Longport Borough	6	ATLANTIC	1,574	0	0.00%
Margate City	6	ATLANTIC	7,090	4	0.00%
Mullica Township	6	ATLANTIC	2,596	351	1.04%
Northfield City	6	ATLANTIC	3,196	196	0.45%
Pleasantville City	6	ATLANTIC	7,067	25	0.03%
Port Republic	6	ATLANTIC	459	54	0.90%

City					
Somers Point City	6	ATLANTIC	5,481	106	0.14%
Ventnor City	6	ATLANTIC	7,969	0	0.00
Weymouth Township	6	ATLANTIC	1,135	188	1.30%
Allendale Borough	1	BERGEN	2,436	234	0.72%
Alpine Borough	1	BERGEN	1,053	258	2.03%
Bergenfield Borough	1	BERGEN	9,311	162	0.13%
Bogota Borough	1	BERGEN	2,970	59	0.14%
Carlstadt Borough	1	BERGEN	2,497	5	0.02%
Cliffside Park Borough	1	BERGEN	10,493	117	0.08%
Closter Borough	1	BERGEN	3,033	122	0.29%
Cresskill Borough	1	BERGEN	2,926	162	0.41%
Demarest Borough	1	BERGEN	1,799	130	0.54%
Dumont Borough	1	BERGEN	6,680	183	0.20%
East Rutherford Borough	1	BERGEN	3,887	100	0.19%
Edgewater Borough	1	BERGEN	5,854	619	0.80%
Elmwood Park Borough	1	BERGEN	7,706	403	0.38%
Emerson Borough	1	BERGEN	2,738	280	0.77%
Englewood City	1	BERGEN	10,127	465	0.34%
Englewood Cliffs Borough	1	BERGEN	2,156	187	0.65%
Fair Lawn	1	BERGEN	12,366	332	0.19%

Borough					
Fairview Borough	1	BERGEN	5,180	130	0.18%
Fort Lee Borough	1	BERGEN	19,453	1,119	0.42%
Franklin Lakes Borough	1	BERGEN	4,279	593	1.07%
Garfield City	1	BERGEN	11,917	194	0.12%
Glen Rock Borough	1	BERGEN	4,144	113	0.20%
Hackensack City	1	BERGEN	19,854	462	0.17%
Harrington Park Borough	1	BERGEN	1,765	154	0.66%
Hasbrouck Heights Borough	1	BERGEN	4,733	109	0.17%
Haworth Borough	1	BERGEN	1,246	83	0.49%
Hillsdale Borough	1	BERGEN	3,890	298	0.57%
Ho-Ho-Kus Borough	1	BERGEN	1,577	94	0.44%
Leonia Borough	1	BERGEN	3,446	99	0.21%
Little Ferry Borough	1	BERGEN	4,582	116	0.18%
Lodi Borough	1	BERGEN	10,324	313	0.22%
Lyndhurst Township	1	BERGEN	8,157	39	0.03%
Mahwah Township	1	BERGEN	11,958	1,961	1.29%
Maywood Borough	1	BERGEN	3,888	105	0.20%
Midland Park Borough	1	BERGEN	2,748	90	0.24%
Montvale Borough	1	BERGEN	3,076	349	0.86%

Moonachie Borough	1	BERGEN	1,107	19	0.12%
New Milford Borough	1	BERGEN	6,554	116	0.13%
North Arlington Borough	1	BERGEN	6,672	115	0.12%
Northvale Borough	1	BERGEN	1,641	18	0.08%
Norwood Borough	1	BERGEN	2,178	144	0.49%
Oakland Borough	1	BERGEN	5,245	543	0.78%
Old Tappan Borough	1	BERGEN	2,235	317	1.10%
Oradell Borough	1	BERGEN	3,008	156	0.38%
Palisades Park Borough	1	BERGEN	6,929	235	0.25%
Paramus Borough	1	BERGEN	9,137	676	0.55%
Park Ridge Borough	1	BERGEN	3,506	185	0.39%
Ramsey Borough	1	BERGEN	6,223	666	0.81%
Ridgefield Borough	1	BERGEN	4,253	85	0.14%
Ridgefield Park Village	1	BERGEN	5,431	275	0.37%
Ridgewood Village	1	BERGEN	9,137	314	0.25%
River Edge Borough	1	BERGEN	4,321	95	0.16%
River Vale Township	1	BERGEN	3,715	266	0.53%
Rochelle Park Township	1	BERGEN	2,178	60	0.20%
Rockleigh Borough	1	BERGEN	108	24	1.77%

Rutherford Borough	1	BERGEN	7,409	193	0.19%
Saddle Brook Township	1	BERGEN	5,351	166	0.23%
Saddle River Borough	1	BERGEN	1,711	331	1.55%
South Hackensack Township	1	BERGEN	862	16	0.13%
Teaneck Township	1	BERGEN	14,320	571	0.29%
Tenafly Borough	1	BERGEN	5,280	292	0.41%
Teterboro Borough	1	BERGEN	4	-4	-5.07%
Upper Saddle River Borough	1	BERGEN	3,060	336	0.83%
Waldwick Borough	1	BERGEN	3,725	209	0.41%
Wallington Borough	1	BERGEN	5,147	223	0.32%
Washington Township	1	BERGEN	3,781	337	0.67%
Westwood Borough	1	BERGEN	4,745	111	0.17%
Woodcliff Lake Borough	1	BERGEN	2,303	377	1.29%
Wood-Ridge Borough	1	BERGEN	3,335	218	0.48%
Wyckoff Township	1	BERGEN	6,414	571	0.67%
Bass River Township	5	BURLINGTON	668	50	0.56%
Beverly City	5	BURLINGTON	1,094	40	0.27%
Bordentown City	5	BURLINGTON	2,028	110	0.40%

Bordentown Township	5	BURLINGTON	4,977	951	1.53%
Burlington City	5	BURLINGTON	4,561	316	0.51%
Burlington Township	5	BURLINGTON	10,565	2,465	1.92%
Chesterfield Township	5	BURLINGTON	1,014	71	0.52%
Cinnaminson Township	5	BURLINGTON	5,792	489	0.63%
Delanco Township	5	BURLINGTON	1,514	172	0.87%
Delran Township	5	BURLINGTON	7,301	1,013	1.07%
Eastampton Township	5	BURLINGTON	2,770	276	0.75%
Edgewater Park Township	5	BURLINGTON	3,613	259%	0.53%
Evesham Township	5	BURLINGTON	18,984	1,532	0.60%
Fieldsboro Borough	5	BURLINGTON	247	27	0.83%
Florence Township	5	BURLINGTON	5,371	706	1.01%
Hainesport Township	5	BURLINGTON	2,556	510	1.60%
Lumberton Township	5	BURLINGTON	5,917	1,203	1.64%
Mansfield Township	5	BURLINGTON	4,179	1,123	2.26%
Maple Shade Township	5	BURLINGTON	9,439	348	0.27%
Medford Lakes Borough	5	BURLINGTON	1,567	8	0.03%
Medford	5	BURLINGTON	9,917	1,287	1.00%

Township					
Moorestown Township	5	BURLINGTON	8,993	1,339	1.16%
Mount Holly Township	5	BURLINGTON	4,632	339	0.54%
Mount Laurel Township	5	BURLINGTON	20,715	3,008	1.13%
New Hanover Township	5	BURLINGTON	1,458	97	0.49%
North Hanover Township	5	BURLINGTON	2,670	-32	-0.09%
Palmyra Borough	5	BURLINGTON	3,820	323	0.63%
Pemberton Borough	5	BURLINGTON	555	31	0.41%
Pemberton Township	5	BURLINGTON	11,857	935	0.59%
Riverside Township	5	BURLINGTON	3,181	51	0.12%
Riverton Borough	5	BURLINGTON	1,142	27	0.17%
Shamong Township	5	BURLINGTON	2,542	274	0.82%
Southampton Township	5	BURLINGTON	5,445	479	0.66%
Springfield Township	5	BURLINGTON	1,407	176	0.96%
Tabernacle Township	5	BURLINGTON	2,670	223	0.62%
Washington Township	5	BURLINGTON	151	-20	-0.89%
Westampton Township	5	BURLINGTON	3,333	554	1.31%
Willingboro Township	5	BURLINGTON	11,740	535	0.33%

Woodland Township	5	BURLINGTON	649	121	1.48%
Wrightstown Borough	5	BURLINGTON	209	-114	-3.05%
Audubon Borough	5	CAMDEN	3,817	21	0.04%
Audubon Park Borough	5	CAMDEN	510	12	0.18%
Barrington Borough	5	CAMDEN	3,423	231	0.50%
Bellmawr Borough	5	CAMDEN	4,489	-57	-0.09%
Berlin Borough	5	CAMDEN	3,084	511	1.30%
Berlin Township	5	CAMDEN	2,306	246	0.81%
Brooklawn Borough	5	CAMDEN	1,036	13	0.09%
Camden City	5	CAMDEN	30,022	297	0.07%
Cherry Hill Township	5	CAMDEN	29,190	1,742	0.44%
Chesilhurst Borough	5	CAMDEN	708	109	1.20%
Clementon Borough	5	CAMDEN	2,100	-89	-0.30%
Collingswood Borough	5	CAMDEN	6,916	72	0.07%
Gibbsboro Borough	5	CAMDEN	1,014	136	1.04%
Gloucester City	5	CAMDEN	4,440	-129	-0.20%
Gloucester Township	5	CAMDEN	29,692	4,304	1.12%
Haddon Heights Borough	5	CAMDEN	3,178	50	0.11%
Haddon Township	5	CAMDEN	6,507	71	0.08%

Haddonfield Borough	5	CAMDEN	4,691	67	0.10%
Hi-Nella Borough	5	CAMDEN	512	16	0.23%
Laurel Springs Borough	5	CAMDEN	773	-26	-0.24%
Lawnside Borough	5	CAMDEN	1,209	84	0.51%
Lindenwold Borough	5	CAMDEN	8,217	-10	-0.01%
Magnolia Borough	5	CAMDEN	1,841	2	0.01%
Merchantville Borough	5	CAMDEN	1,614	2	0.01%
Mount Ephraim Borough	5	CAMDEN	1,894	12	0.05%
Oaklyn Borough	5	CAMDEN	1,896	11	0.04%
Pennsauken Township	5	CAMDEN	13,632	599	0.32%
Pine Hill Borough	5	CAMDEN	5,278	705	1.03%
Pine Valley Borough	5	CAMDEN	31	7	1.80%
Runnemede Borough	5	CAMDEN	3,637	113	0.23%
Somerdale Borough	5	CAMDEN	2,197	27	0.09%
Stratford Borough	5	CAMDEN	2,872	27	0.07%
Tavistock Borough	5	CAMDEN	10	3	2.20%
Voorhees Township	5	CAMDEN	12,851	1,412	0.83%
Waterford	5	CAMDEN	4,120	351	0.64%

Township					
Winslow Township	5	CAMDEN	14,770	1,948	1.02%
Woodlynne Borough	5	CAMDEN	1,007	0	0.00%
Avalon Borough	6	CAPE MAY	5,283	-16	-0.02%
Cape May City	6	CAPE MAY	3,929	-35	-0.06%
Cape May Point Borough	6	CAPE MAY	499	-4	-0.05%
Dennis Township	6	CAPE MAY	2,266	-20	-0.06%
Lower Township	6	CAPE MAY	13,	-124	-0.07%
Middle Township	6	CAPE MAY	7,519	-68	-0.06%
North Wildwood City	6	CAPE MAY	7,281	-66	-0.06%
Ocean City	6	CAPE MAY	20,305	-187	-0.07%
Sea Isle City	6	CAPE MAY	6,804	-62	-0.06%
Stone Harbor Borough	6	CAPE MAY	3,351	-30	-0.06%
Upper Township	6	CAPE MAY	5,352	-48	-0.06%
West Cape May Borough	6	CAPE MAY	998	-8	-0.06%
West Wildwood Borough	6	CAPE MAY	746	-7	-0.07%
Wildwood City	6	CAPE MAY	6,247	-58	-0.07%
Wildwood Crest Borough	6	CAPE MAY	4,715	-44	-0.07%
Woodbine Borough	6	CAPE MAY	1,048	-9	-0.06%
Bridgeton City	6	CUMBERLAND	6,877	88	0.09%
Commercial Township	6	CUMBERLAND	2,401	190	0.59%
Deerfield Township	6	CUMBERLAND	1,311	184	1.09%

Downe Township	6	CUMBERLAND	1,224	74	0.45%
Fairfield Township	6	CUMBERLAND	2,067	62	0.22%
Greenwich Township	6	CUMBERLAND	399	34	0.64%
Hopewell Township	6	CUMBERLAND	2,060	289	1.09%
Lawrence Township	6	CUMBERLAND	1,239	175	1.09%
Maurice River Township	6	CUMBERLAND	1,874	244	1.00%
Millville City	6	CUMBERLAND	11,747	907	0.58%
Shiloh Borough	6	CUMBERLAND	239	18	0.55%
Stow Creek Township	6	CUMBERLAND	667	81	0.93%
Upper Deerfield Township	6	CUMBERLAND	3,305	347	0.80%
Vineland City	6	CUMBERLAND	23,336	2,038	0.65%
Belleville Township	2	ESSEX	14,419	296	0.15%
Bloomfield Township	2	ESSEX	19,962	505	0.18%
Caldwell Borough	2	ESSEX	3,573	137	0.28%
Cedar Grove Township	2	ESSEX	5,204	639	0.94%
City Of Organe Township	2	ESSEX	12,816	185	0.10%
East Orange City	2	ESSEX	28,894	456	0.11%
Essex Fells Borough	2	ESSEX	872	101	0.88%
Fairfield Township	2	ESSEX	2,575	113	0.32%

Glen Ridge Borough	2	ESSEX	2,507	30	0.09%
Irvington Township	2	ESSEX	24,261	236	0.07%
Livingston Township	2	ESSEX	10,356	703	0.50%
Maplewood Township	2	ESSEX	8,715	132	0.11%
Millburn Township	2	ESSEX	7,552	354	0.34%
Montclair Township	2	ESSEX	15,778	329	0.15%
Newark City	2	ESSEX	106,086	4,279	0.29%
North Caldwell Borough	2	ESSEX	2,389	243	0.77%
Nutley Township	2	ESSEX	11,689	241	0.15%
Roseland Borough	2	ESSEX	2,563	327	0.98%
South Orange Village Township	2	ESSEX	5,793	112	0.14%
Verona Township	2	ESSEX	6,107	362	0.44%
West Caldwell Township	2	ESSEX	4,404	323	0.55%
West Orange Township	2	ESSEX	19,834	2,468	0.95%
Clayton Borough	5	GLOUCESTER	3,238	482	1.16%
Deptford Township	5	GLOUCESTER	13,219	1,998	1.18%
East Greenwich Township	5	GLOUCESTER	2,499	375	1.17%
Elk Township	5	GLOUCESTER	1,509	130	0.65%

Franklin Township	5	GLOUCESTER	6,600	883	1.03%
Glassboro Borough	5	GLOUCESTER	7,554	858	0.87%
Greenwich Township	5	GLOUCESTER	2,141	129	0.44%
Harrison Township	5	GLOUCESTER	4,900	1,391	2.41%
Logan Township	5	GLOUCESTER	2,489	362	1.13%
Mantua Township	5	GLOUCESTER	7,159	1,450	1.63%
Monroe Township	5	GLOUCESTER	13,441	1,889	1.09%
National Park Borough	5	GLOUCESTER	1,243	70	0.42%
Newfield Borough	5	GLOUCESTER	681	49	0.54%
Paulsboro Borough	5	GLOUCESTER	2,764	124	0.33%
Pitman Borough	5	GLOUCESTER	3,932	255	0.48%
South Harrison Township	5	GLOUCESTER	1,195	249	1.68%
Swedesboro Borough	5	GLOUCESTER	965	90	0.70%
Washington Township	5	GLOUCESTER	19,838	2,598	1.01%
Wenonah Borough	5	GLOUCESTER	927	61	0.49%
West Deptford Township	5	GLOUCESTER	9,080	803	0.66%
Westville Borough	5	GLOUCESTER	1,997	57	0.21%
Woodbury City	5	GLOUCESTER	4,438	50	0.08%
Woodbury	5	GLOUCESTER	1,098	43	0.28%

Heights Borough					
Woolwich Township	5	GLOUCESTER	3,116	1,374	4.24%
Bayonne City	1	HUDSON	27,240	533	0.14%
East Newark Borough	1	HUDSON	794	2	0.02%
Guttenberg Town	1	HUDSON	4,755	3	0.00%
Harrison Town	1	HUDSON	5,364	125	0.17%
Hoboken City	1	HUDSON	20,680	277	0.10%
Jersey City	1	HUDSON	96,380	2,587	0.19%
Kearny Town	1	HUDSON	14,025	232	0.12%
North Bergen Township	1	HUDSON	23,248	831	0.26%
Secaucus Town	1	HUDSON	6,445	87	0.10%
Union City	1	HUDSON	24,075	414	0.12%
Weehawken Township	1	HUDSON	6,378	250	0.29%
West New York Town	1	HUDSON	18,085	316	0.13%
Alexandria Township	3	HUNTERDON	2,028	321	1.24%
Bethlehem Township	3	HUNTERDON	1,561	185	0.91%
Bloomsbury Borough	3	HUNTERDON	361	14	0.29%
Califon Borough	3	HUNTERDON	434	19	0.32%
Clinton Town	3	HUNTERDON	1,262	138	0.83%
Clinton Township	3	HUNTERDON	5,438	879	1.27%
Delaware Township	3	HUNTERDON	1,956	176	0.68%
East Amwell Township	3	HUNTERDON	1,875	192	0.77%

Flemington Borough	3	HUNTERDON	1,953	54	0.20%
Franklin Township	3	HUNTERDON	1,339	144	0.82%
Frenchtown Borough	3	HUNTERDON	669	25	0.27%
Glen Gardner Borough	3	HUNTERDON	882	19	0.16%
Hampton Borough	3	HUNTERDON	548	-33	-0.41%
High Bridge Borough	3	HUNTERDON	1,594	89	0.41%
Holland Township	3	HUNTERDON	2,242	226	0.76%
Kingwood Township	3	HUNTERDON	1,783	269	1.18%
Lambertville City	3	HUNTERDON	2,155	162	0.56%
Lebanon Borough	3	HUNTERDON	518	9	0.13%
Lebanon Township	3	HUNTERDON	2,310	169	0.54%
Milford Borough	3	HUNTERDON	498	9	0.14%
Raritan Township	3	HUNTERDON	9,249	1,449	1.22%
Readington Township	3	HUNTERDON	7,327	1,166	1.25%
Stockton Borough	3	HUNTERDON	273	11	0.31%
Tewksbury Township	3	HUNTERDON	2,551	358	1.09%
Union Township	3	HUNTERDON	2,127	306	1.11%
West Amwell Township	3	HUNTERDON	1,335	226	1.33%

East Windsor Township	4	MERCER	12,276	1,592	1.00%
Ewing Township	4	MERCER	13,718	618	0.33%
Hamilton Township	4	MERCER	37,089	1,816	0.36%
Hightstown Borough	4	MERCER	2,119	15	0.05%
Hopewell Borough	4	MERCER	866	25	0.21%
Hopewell Township	4	MERCER	8,047	1,993	2.05%
Lawrence Township	4	MERCER	13,673	1,775	1.00%
Pennington Borough	4	MERCER	1,129	76	0.50%
Princeton Borough	4	MERCER	3,154	-157	-0.35%
Princeton Township	4	MERCER	7,803	1,003	0.99%
Trenton City	4	MERCER	34,746	853	0.18%
Washington Township	4	MERCER	6,068	1,491	2.03%
West Windsor Township	4	MERCER	9,674	1,522	1.23%
Carteret Borough	3	MIDDLESEX	8,020	387	0.35%
Cranbury Township	3	MIDDLESEX	1,381	193	1.08%
Dunellen Borough	3	MIDDLESEX	2,558	10	0.03%
East Brunswick Township	3	MIDDLESEX	18,745	1,530	0.61%
Edison Township	3	MIDDLESEX	39,834	2,870	0.54%

Helmetta Borough	3	MIDDLESEX	868	62	0.53%
Highland Park Borough	3	MIDDLESEX	6,312	166	0.19%
Jamesburg Borough	3	MIDDLESEX	2,482	107	0.32%
Metuchen Borough	3	MIDDLESEX	5,488	233	0.31%
Middlesex Borough	3	MIDDLESEX	5,347	141	0.19%
Milltown Borough	3	MIDDLESEX	2,835	106	0.27%
Monroe Township Township	3	MIDDLESEX	18,430	3,630	1.58%
New Brunswick City	3	MIDDLESEX	14,492	480	0.24%
North Brunswick Township	3	MIDDLESEX	16,759	1,829	0.83%
Old Bridge Township	3	MIDDLESEX	24,774	1,827	0.55%
Perth Amboy City	3	MIDDLESEX	15,975	509	0.23%
Piscataway Township	3	MIDDLESEX	19,424	1,897	0.74%
Plainsboro Township	3	MIDDLESEX	11,138	1,493	1.03%
Sayreville Borough	3	MIDDLESEX	17,688	1,784	0.76%
South Amboy City	3	MIDDLESEX	3,312	156	0.35%
South Brunswick Township	3	MIDDLESEX	18,691	3,622	1.55%
South Plainfield	3	MIDDLESEX	7,987	330	0.30%

Borough					
South River Borough	3	MIDDLESEX	6,332	365	0.42%
Spotswood Borough	3	MIDDLESEX	3,452	188	0.40%
Woodbridge Township	3	MIDDLESEX	38,391	1,942	0.37%
Aberdeen Township	4	MONMOUTH	6,987	380	0.40%
Allenhurst Borough	4	MONMOUTH	369	0	0.00%
Allentown Borough	4	MONMOUTH	759	38	0.36%
Asbury Park City	4	MONMOUTH	7,876	145	0.13%
Atlantic Highlands Borough	4	MONMOUTH	2,167	103	0.35%
Avon-By-The-Sea Borough	4	MONMOUTH	1,385	3	0.01%
Belmar Borough	4	MONMOUTH	4,009	13	0.02%
Bradley Beach Borough	4	MONMOUTH	3,181	34	0.08%
Brielle Borough	4	MONMOUTH	2,246	105	0.34%
Colts Neck Township	4	MONMOUTH	3,891	456	0.89%
Deal Borough	4	MONMOUTH	961	13	0.10%
Eatontown Borough	4	MONMOUTH	6,763	360	0.39%
Englishtown Borough	4	MONMOUTH	770	62	0.60%
Fair Haven Borough	4	MONMOUTH	2,052	8	0.03%

Farmingdale Borough	4	MONMOUTH	646	7	0.08%
Freehold Borough	4	MONMOUTH	4,134	104	0.18%
Freehold Township	4	MONMOUTH	13,635	1,742	0.98%
Hazlet Township	4	MONMOUTH	7,692	283	0.27%
Highlands Borough	4	MONMOUTH	2,881	73	0.18%
Holmdel Township	4	MONMOUTH	6,402	885	1.07%
Howell Township	4	MONMOUTH	19,735	2,501	0.97%
Interlaken Borough	4	MONMOUTH	396	0	0.00%
Keansburg Borough	4	MONMOUTH	4,278	9	0.02%
Keyport Borough	4	MONMOUTH	3,489	82	0.17%
Lake Como Borough	4	MONMOUTH	1,103	0	0.00%
Little Silver Borough	4	MONMOUTH	2,344	45	0.14%
Loch Arbour Village	4	MONMOUTH	155	0	0.00%
Long Branch City	4	MONMOUTH	14,493	413	0.21%
Manalapan Township	4	MONMOUTH	13,991	1,747	0.96%
Manasquan Borough	4	MONMOUTH	3,542	15	0.03%
Marlboro Township	4	MONMOUTH	15,678	2,704	1.36%
Matawan	4	MONMOUTH	3,767	104	0.20%

Borough					
Middletown Township	4	MONMOUTH	25,665	1,162	0.33%
Millstone Township	4	MONMOUTH	3,743	693	1.47%
Monmouth Beach Borough	4	MONMOUTH	1,980	2	0.01%
Neptune City Borough	4	MONMOUTH	2,389	43	0.13%
Neptune Township	4	MONMOUTH	13,242	749	0.42%
Ocean Township	4	MONMOUTH	11,632	711	0.45%
Oceanport Borough	4	MONMOUTH	2,252	115	0.38%
Red Bank Borough	4	MONMOUTH	5,542	66	0.09%
Roosevelt Borough	4	MONMOUTH	370	18	0.35%
Rumson Borough	4	MONMOUTH	2,671	67	0.18%
Sea Bright Borough	4	MONMOUTH	1,202	0	0.00%
Sea Girt Borough	4	MONMOUTH	1,319	40	0.22%
Shrewsbury Borough	4	MONMOUTH	1,304	48	0.27%
Shrewsbury Township	4	MONMOUTH	558	13	0.17%
Spring Lake Borough	4	MONMOUTH	1,927	5	0.02%
Spring Lake Heights Borough	4	MONMOUTH	3,015	63	0.15%
Tinton Falls Borough	4	MONMOUTH	7,671	1,112	1.12%
Union Beach	4	MONMOUTH	2,328	56	0.17%

Borough					
Upper Freehold Township	4	MONMOUTH	2,530	581	1.88%
Wall Township	4	MONMOUTH	12,365	1,805	1.13%
West Long Branch Borough	4	MONMOUTH	2,619	75	0.21%
Boonton Town	2	MORRIS	3,623	260	0.53%
Boonton Township	2	MORRIS	1,789	235	1.01%
Butler Borough	2	MORRIS	3,429	207	0.45%
Chatham Borough	2	MORRIS	3,313	87	0.19%
Chatham Township	2	MORRIS	4,384	331	0.56%
Chester Borough	2	MORRIS	694	54	0.58%
Chester Township	2	MORRIS	2,881	361	0.96%
Denville Township	2	MORRIS	7,643	1,260	1.29%
Dover Town	2	MORRIS	5,753	181	0.23%
East Hanover Township	2	MORRIS	4,281	325	0.57%
Florham Park Borough	2	MORRIS	5,488	757	1.07%
Hanover Township	2	MORRIS	5,555	640	0.88%
Harding Township	2	MORRIS	1,305	39	0.22%
Jefferson Township	2	MORRIS	8,483	778	0.69%
Kinnelon Borough	2	MORRIS	3,362	185	0.41%

Lincoln Park Borough	2	MORRIS	4,476	339	0.56%
Long Hill Township	2	MORRIS	3,529	288	0.61%
Madison Borough	2	MORRIS	5,448	182	0.24%
Mendham Borough	2	MORRIS	2,019	163	0.60%
Mendham Township	2	MORRIS	2,235	288	0.99%
Mine Hill Township	2	MORRIS	1,600	186	0.88%
Montville Township	2	MORRIS	8,802	1,030	0.89%
Morris Plains Borough	2	MORRIS	2,159	150	0.51%
Morris Township	2	MORRIS	9,284	1,017	0.83%
Morristown Town	2	MORRIS	8,202	408	0.37%
Mount Arlington Borough	2	MORRIS	2,631	398	1.18%
Mount Olive Township	2	MORRIS	10,836	1,058	0.74%
Mountain Lakes Borough	2	MORRIS	1,509	126	0.62%
Netcong Borough	2	MORRIS	1,385	48	0.25%
Parsippany-Troy Hills Township	2	MORRIS	22,711	2,220	0.74%
Pequannock Township	2	MORRIS	5,455	236	0.32%
Randolph Township	2	MORRIS	10,923	1,570	1.11%
Riverdale	2	MORRIS	1,123	147	1.00%

Borough					
Rockaway Borough	2	MORRIS	2,667	168	0.47%
Rockaway Township	2	MORRIS	11,098	1,764	1.24%
Roxbury Township	2	MORRIS	10,330	1,611	1.22%
Victory Gardens Borough	2	MORRIS	605	19	0.23%
Washington Township	2	MORRIS	6,743	588	0.65%
Wharton Borough	2	MORRIS	2,613	211	0.60%
Barnegat Light Borough	4	OCEAN	1,248	0	0.00%
Barnegat Township	4	OCEAN	8,304	1,571	1.51%
Bay Head Borough	4	OCEAN	1,071	3	0.02%
Beach Haven Borough	4	OCEAN	2,563	-43	-0.12%
Beachwood Borough	4	OCEAN	4,293	508	0.90%
Berkeley Township	4	OCEAN	28,022	4,030	1.12%
Brick Township	4	OCEAN	36,384	2,568	0.52%
Eagleswood Township	4	OCEAN	812	81	0.76%
Harvey Cedars Borough	4	OCEAN	1,239	0	0.00%
Island Heights Borough	4	OCEAN	866	29	0.25%
Jackson	4	OCEAN	21,229	4,350	1.65%

Township					
Lacey Township	4	OCEAN	12,776	1,608	0.97%
Lakehurst Borough	4	OCEAN	1,049	24	0.17%
Lakewood Township	4	OCEAN	28,591	4,937	1.36%
Lavallette Borough	4	OCEAN	3,250	0	0.00%
Little Egg Harbor Township	4	OCEAN	11,028	1,937	1.39%
Long Beach Township	4	OCEAN	9,196	2	0.00%
Manchester Township	4	OCEAN	28,673	4,019	1.08%
Mantoloking Borough	4	OCEAN	544	0	0.00%
Ocean Gate Borough	4	OCEAN	1,169	4	0.02%
Ocean Township	4	OCEAN	3,647	469	0.99%
Pine Beach Borough	4	OCEAN	929	34	0.26%
Plumsted Township	4	OCEAN	3,603	655	1.44%
Point Pleasant Beach Borough	4	OCEAN	3,641	31	0.06%
Point Pleasant Borough	4	OCEAN	8,570	66	0.06%
Seaside Heights Borough	4	OCEAN	2,896	35	0.09%
Seaside Park Borough	4	OCEAN	2,859	11	0.03%
Ship Bottom Borough	4	OCEAN	2,252	0	0.00%

South Toms River Borough	4	OCEAN	1,217	72	0.44%
Stafford Township	4	OCEAN	15,822	3,143	1.59%
Surf City Borough	4	OCEAN	2,694	0	0.00%
Toms River Township	4	OCEAN	50,955	7,335	1.12%
Tuckerton Borough	4	OCEAN	2,120	106	0.37%
Bloomingdale Borough	1	PASSAIC	3,280	269	0.61%
Clifton City	1	PASSAIC	34,817	2,949	0.63%
Haledon Borough	1	PASSAIC	3,300	305	0.70%
Hawthorne Borough	1	PASSAIC	8,270	694	0.63%
Little Falls Township	1	PASSAIC	5,886	535	0.68%
North Haledon Borough	1	PASSAIC	3,227	449	1.08%
Passaic City	1	PASSAIC	20,992	529	0.18%
Paterson City	1	PASSAIC	44,925	-2,426	-0.37%
Pompton Lakes Borough	1	PASSAIC	4,547	371	0.61%
Prospect Park Borough	1	PASSAIC	2,053	133	0.48%
Ringwood Borough	1	PASSAIC	4,533	202	0.33%
Totowa Borough	1	PASSAIC	4,140	408	0.74%
Wanaque Borough	1	PASSAIC	4,119	508	0.95%
Wayne	1	PASSAIC	24,394	4,245	1.37%

Township					
West Milford Township	1	PASSAIC	11,088	629	0.42%
West Paterson Borough	1	PASSAIC	5,120	468	0.69%
Alloway Township	6	SALEM	1,114	81	0.54%
Carneys Point Township	6	SALEM	3,673	317	0.65%
Elmer Borough	6	SALEM	557	2	0.03%
Elsinboro Township	6	SALEM	534	5	0.07%
Lower Alloways Creek Township	6	SALEM	919	156	1.33%
Mannington Township	6	SALEM	642	67	0.79%
Oldmans Township	6	SALEM	810	98	0.93%
Penns Grove Borough	6	SALEM	2,073	12	0.04%
Pennsville Township	6	SALEM	5,971	306	0.38%
Pilesgrove Township	6	SALEM	1,574	241	1.20%
Pittsgrove Township	6	SALEM	3,887	588	1.18%
Quinton Township	6	SALEM	1,266	110	0.65%
Salem City	6	SALEM	2,926	76	0.19%
Upper Pittsgrove Township	6	SALEM	1,498	191	0.98%
Woodstown Borough	6	SALEM	1,590	127	0.59%

Bedminster Township	3	SOMERSET	5,076	546	0.82%
Bernards Township	3	SOMERSET	11,366	1,141	0.76%
Bernardsville Borough	3	SOMERSET	3,291	378	0.87%
Bound Brook Borough	3	SOMERSET	3,805	30	0.06%
Branchburg Township	3	SOMERSET	6,598	1,001	1.18%
Bridgewater Township	3	SOMERSET	18,831	2,354	0.96%
Far Hills Borough	3	SOMERSET	533	116	1.77%
Franklin Township	3	SOMERSET	24,298	2,886	0.91%
Green Brook Township	3	SOMERSET	2,475	230	0.70%
Hillsborough Township	3	SOMERSET	15,542	2,143	1.07%
Manville Borough	3	SOMERSET	4,382	84	0.14%
Millstone Borough	3	SOMERSET	189	15	0.58%
Montgomery Township	3	SOMERSET	9,260	1,931	1.68%
North Plainfield Borough	3	SOMERSET	7,673	137	0.13%
Peapack-Gladstone Borough	3	SOMERSET	1,001	111	0.85%
Raritan Borough	3	SOMERSET	2,984	311	0.79%
Rocky Hill	3	SOMERSET	319	23	0.53%

Borough					
Somerville Borough	3	SOMERSET	5,030	164	0.24%
South Bound Brook Borough	3	SOMERSET	1,676	11	0.04%
Warren Township	3	SOMERSET	6,462	1,307	1.63%
Watchung Borough	3	SOMERSET	2,192	115	0.39%
Andover Borough	1	SUSSEX	285	10	0.25%
Andover Township	1	SUSSEX	2,485	369	1.16%
Branchville Borough	1	SUSSEX	380	3	0.06%
Byram Township	1	SUSSEX	3,592	369	0.78%
Frankford Township	1	SUSSEX	2,770	366	1.02%
Franklin Borough	1	SUSSEX	2,181	148	0.50%
Fredon Township	1	SUSSEX	1,260	166	1.01%
Green Township	1	SUSSEX	1,431	266	1.48%
Hamburg Borough	1	SUSSEX	1,490	125	0.63%
Hampton Township	1	SUSSEX	2,331	231	0.75%
Hardyston Township	1	SUSSEX	4,078	846	1.68%
Hopatcong Borough	1	SUSSEX	6,632	362	0.40%
Lafayette	1	SUSSEX	1,079	215	1.60%

Township					
Montague Township	1	SUSSEX	1,902	239	0.96%
Newton Town	1	SUSSEX	3,955	427	0.82%
Ogdensburg Borough	1	SUSSEX	954	44	0.33%
Sandyston Township	1	SUSSEX	1,067	126	0.90%
Sparta Township	1	SUSSEX	7,960	993	0.96%
Stanhope Borough	1	SUSSEX	1,600	142	0.67%
Stillwater Township	1	SUSSEX	2,643	506	1.53%
Sussex Borough	1	SUSSEX	1,025	50	0.35%
Vernon Township	1	SUSSEX	12,064	1,597	1.02%
Walpack Township	1	SUSSEX	31	-2	-0.52%
Wantage Township	1	SUSSEX	4,768	818	1.35%
Berkeley Heights Township	2	UNION	5,585	844	1.18%
Clark Township	2	UNION	6,113	304	0.36%
Cranford Township	2	UNION	9,149	469	0.38%
Elizabeth City	2	UNION	47,274	3,101	0.49%
Fanwood Borough	2	UNION	2,745	87	0.23%
Garwood Borough	2	UNION	1,811	18	0.07%

Hillside Township	2	UNION	7,746	264	0.25%
Kenilworth Borough	2	UNION	3,113	142	0.33%
Linden City	2	UNION	17,076	1,149	0.50%
Mountainside Borough	2	UNION	2,629	111	0.31%
New Providence Borough	2	UNION	4,847	284	0.43%
Plainfield City	2	UNION	16,665	327	0.14%
Rahway City	2	UNION	10,877	318	0.21%
Roselle Borough	2	UNION	8,151	177	0.16%
Roselle Park Borough	2	UNION	5,389	88	0.12%
Scotch Plains Township	2	UNION	9,279	612	0.49%
Springfield Township	2	UNION	6,851	457	0.49%
Summit City	2	UNION	8,532	286	0.24%
Union Township	2	UNION	21,969	1,411	0.48%
Westfield Town	2	UNION	11,675	648	0.41%
Winfield Township	2	UNION	726	23	0.23%
Allamuchy Township	2	WARREN	2,035	197	0.73%
Alpha Borough	2	WARREN	1,163	108	0.70%
Belvidere Town	2	WARREN	1,288	100	0.58%
Blairstown Township	2	WARREN	2,561	307	0.92%
Franklin	2	WARREN	1,390	211	1.18%

Township					
Frelinghuysen Township	2	WARREN	880	93	0.80%
Greenwich Township	2	WARREN	2,807	945	2.98%
Hackettstown Town	2	WARREN	4,326	368	0.64%
Hardwick Township	2	WARREN	693	110	1.24%
Harmony Township	2	WARREN	1,235	121	0.74%
Hope Township	2	WARREN	911	121	1.02%
Independence Township	2	WARREN	2,631	306	0.89%
Knowlton Township	2	WARREN	1,363	173	0.97%
Liberty Township	2	WARREN	1,276	133	0.79%
Lopatcong Township	2	WARREN	3,850	792	1.66%
Mansfield Township	2	WARREN	3,305	268	0.61%
Oxford Township	2	WARREN	1,292	219	1.34%
Phillipsburg Town	2	WARREN	7,101	367	0.38%
Pohatcong Township	2	WARREN	1,567	128	0.61%
Washington Borough	2	WARREN	3,118	190	0.45%
Washington Township	2	WARREN	2,530	256	0.77%
White	2	WARREN	2,659	545	1.65%

Township			
New Jersey	3,693,378	280,397	0.57%

Source: Econsult Corporation (2007)

APPENDIX B - MUNICIPAL GROWTH RATES IN THE EMPLOYMENT ALLOCATION MODEL

Employment growth of a municipality should slow down as the municipality's nonresidential growth capacity (in terms of floor space) is being reached. In other words, a municipality is unlikely to sustain its historical growth rates as measured between the 1993 and 2002 period in the following 16 years if it is approaching 100 percent build-out.

To capture this relationship between the anticipated employment growth rate between 2002 and 2018 and the 2002 build-out level, a regression model was developed to empirically estimate the implied historical growth rates that measure how build-out levels affect future growth rates. In this model, the dependent variable is the employment growth rate (a linear annual growth rate) between 1993 and 2002 for each of the 566 municipalities. The independent variable is the 1993 build-out level and was estimated by dividing the number of employment in 1993 with the sum of the 2002 employment and the anticipated increase in employment after 2002 based on all nonresidential land being developed. This equation applies to municipalities that had a positive growth between 1993 and 2002. However, for a few declining communities, this equation may end up as a build-out ratio over 100 percent if more employment was lost between 1993 and 2002 than the potential employment growth after 2002. In this case, the build-out level is estimated by changing the denominator in this equation to the sum of the 1993 employment and post-2002 potential employment that could be accommodated by a full development of all nonresidential land.

This regression model of implied historical rates of employment had 566 observations initially, but outliers with historical growth rates above the 99 percentile or below the 1 percentile in the sample were excluded. Since municipalities within the same COAH Region may behave differently as a group from others in a different COAH Region, the y-intercept of implied rates would differ by COAH regions. To capture this difference, one set of dummy variables is introduced in the model to reflect the effects of the COAH region. Unlike the housing model, the regression model of implied employment growth did not include a set of COAH regional interaction dummy variables because the relationship between capacity and growth rates was not found to differ across COAH regions.

Figure A.2 - Employment by Municipality: 2002, 2004 and 2018

Municipality	COAH Region	County	Employment in 2002	Employment in 2004	Employment Based On "S" Curve Growth	Employment Based On Historic Growth
Absecon City	6	Atlantic	3,292	3,363	5,033	4,686
Atlantic City	6	Atlantic	59,828	59,621	63,484	56,502

Brigantine City	6	Atlantic	2,031	2,032	2,774	3,212
Buena Borough	6	Atlantic	1,634	1,656	3,057	2,031
Buena Vista Township	6	Atlantic	1,222	1,259	2,761	2,001
Corbin City	6	Atlantic	538	548	850	735
Egg Harbor City	6	Atlantic	3,444	3,869	9,035	23,487
Egg Harbor Township	6	Atlantic	15,928	17,406	43,020	63,550
Estell Manor City	6	Atlantic	261	282	672	947
Folsom Borough	6	Atlantic	872	895	1,466	1,348
Galloway Township	6	Atlantic	7,428	7,819	18,494	15,151
Hamilton Township	6	Atlantic	10,463	10,865	21,578	19,515
Hammonton Town	6	Atlantic	8,407	8,628	16,405	12,917
Linwood City	6	Atlantic	2,837	2,856	3,434	3,166
Longport Borough	6	Atlantic	229	227	229	194
Margate City	6	Atlantic	1,660	1,661	1,819	1,858
Mullica Township	6	Atlantic	594	608	1,195	869

Northfield City	6	Atlantic	4,731	4,849	7,369	7,111
Pleasantville City	6	Atlantic	7,610	7,717	11,450	9,458
Port Republic City	6	Atlantic	94	95	168	120
Somers Point City	6	Atlantic	6,117	6,210	8,710	9,202
Ventnor City	6	Atlantic	2,027	2,027	2,402	2,551
Weymouth Township	6	Atlantic	20	20	46	14
Allendale Borough	1	Bergen	6,706	6,735	13,201	45,597
Alpine Borough	1	Bergen	350	361	387	304
Bergenfield Borough	1	Bergen	4,244	4,292	4,418	3,933
Bogota Borough	1	Bergen	1,815	1,843	2,345	2,798
Carlstadt Borough	1	Bergen	13,407	13,426	13,475	12,948
Cliffside Park Borough	1	Bergen	2,896	2,944	3,491	3,821
Closter Borough	1	Bergen	3,137	3,188	3,460	3,461
Cresskill Borough	1	Bergen	1,893	1,925	2,318	2,571
Demarest Borough	1	Bergen	1,018	1,039	1,163	1,167
Dumont	1	Bergen	2,121	2,146	2,359	2,454

Borough						
East Rutherford Borough	1	Bergen	9,741	9,914	10,833	10,813
Edgewater Borough	1	Bergen	3,775	4,400	8,000	8,499
Elmwood Park Borough	1	Bergen	7,843	8,164	9,194	8,141
Emerson Borough	1	Bergen	2,726	2,818	3,451	3,523
Englewood City	1	Bergen	14,645	14,792	15,586	15,661
Englewood Cliffs Borough	1	Bergen	8,602	8,736	9,128	8,488
Fair Lawn Borough	1	Bergen	11,384	11,503	11,803	10,354
Fairview Borough	1	Bergen	3,129	3,308	3,876	3,260
Fort Lee Borough	1	Bergen	18,064	18,324	24,278	30,724
Franklin Lakes Borough	1	Bergen	7,634	7,740	11,748	18,374
Garfield City	1	Bergen	6,050	6,196	6,583	5,583
Glen Rock Borough	1	Bergen	3,522	3,536	3,873	4,215
Hackensack City	1	Bergen	43,838	44,573	50,285	52,127

Harrington Park Borough	1	Bergen	731	754	1,052	1,267
Hasbrouck Heights Borough	1	Bergen	4,307	4,355	4,808	5,048
Haworth Borough	1	Bergen	701	723	899	947
Hillsdale Borough	1	Bergen	2,300	2,368	2,796	2,823
Ho-Ho-Kus Borough	1	Bergen	1,125	1,144	1,472	1,758
Leonia Borough	1	Bergen	1,988	2,019	2,279	2,385
Little Ferry Borough	1	Bergen	3,088	3,163	3,369	2,922
Lodi Borough	1	Bergen	5,716	5,927	6,815	6,459
Lyndhurst Township	1	Bergen	12,032	12,090	13,640	15,269
Mahwah Township	1	Bergen	13,361	14,175	21,135	23,421
Maywood Borough	1	Bergen	3,580	3,629	3,953	4,031
Midland Park Borough	1	Bergen	3,659	3,698	4,320	4,834
Montvale Borough	1	Bergen	9,859	10,208	11,439	10,677
Moonachie Borough	1	Bergen	6,973	6,998	7,068	6,893
New Milford	1	Bergen	1,749	1,769	1,824	1,668

Borough						
North Arlington Borough	1	Bergen	3,124	3,147	3,645	4,128
Northvale Borough	1	Bergen	4,126	4,142	4,181	3,770
Norwood Borough	1	Bergen	1,893	1,933	2,312	2,484
Oakland Borough	1	Bergen	6,933	7,043	8,133	8,685
Old Tappan Borough	1	Bergen	1,746	1,806	3,692	10,699
Oradell Borough	1	Bergen	2,944	3,008	3,203	2,975
Palisades Park Borough	1	Bergen	3,867	4,015	5,094	5,257
Paramus Borough	1	Bergen	42,920	43,450	47,449	48,847
Park Ridge Borough	1	Bergen	3,568	3,613	4,046	4,272
Ramsey Borough	1	Bergen	10,500	10,831	14,075	15,502
Ridgefield Borough	1	Bergen	5,189	5,278	5,520	4,907
Ridgefield Park Village	1	Bergen	5,077	5,230	6,018	5,908
Ridgewood Village	1	Bergen	11,515	11,588	12,516	13,212
River Edge	1	Bergen	2,903	2,919	3,536	4,273

Borough						
River Vale Township	1	Bergen	1,471	1,498	1,573	1,418
Rochelle Park Township	1	Bergen	4,987	5,027	5,112	4,193
Rockleigh Borough	1	Bergen	1,802	1,923	2,652	2,601
Rutherford Borough	1	Bergen	7,747	7,820	8,239	8,306
Saddle Brook Township	1	Bergen	9,619	9,787	10,561	10,430
Saddle River Borough	1	Bergen	733	772	1,001	985
South Hackensack Township	1	Bergen	5,189	5,215	5,340	5,346
Teaneck Township	1	Bergen	13,671	13,855	15,818	16,943
Tenafly Borough	1	Bergen	4,230	4,304	4,889	5,078
Teterboro Borough	1	Bergen	8,314	8,404	8,676	8,480
Upper Saddle River Borough	1	Bergen	3,968	3,999	5,449	7,567
Waldwick Borough	1	Bergen	2,903	2,963	3,430	3,570
Wallington Borough	1	Bergen	2,510	2,693	3,886	3,901

Washington Township	1	Bergen	1,072	1,112	1,449	1,543
Westwood Borough	1	Bergen	5,901	5,943	6,067	5,906
Woodcliff Lake Borough	1	Bergen	4,288	4,405	4,739	4,122
Wood-Ridge Borough	1	Bergen	3,324	3,533	4,523	4,192
Wyckoff Township	1	Bergen	5,033	5,146	6,110	6,450
Bass River Township	5	Burlington	1,186	1,270	4,164	11,098
Beverly City	5	Burlington	487	504	600	688
Bordentown City	5	Burlington	1,782	1,826	2,333	2,241
Bordentown Township	5	Burlington	4,649	4,921	9,011	8,503
Burlington City	5	Burlington	5,777	6,051	8,571	9,343
Burlington Township	5	Burlington	11,214	11,694	16,253	17,232
Chesterfield Township	5	Burlington	443	482	1,207	1,119
Cinnaminson Township	5	Burlington	7,563	7,742	8,922	9,374
Delanco Township	5	Burlington	2,485	2,745	5,886	7,473
Delran Township	5	Burlington	4,807	4,922	6,143	5,980
Eastampton Township	5	Burlington	620	699	1,620	2,337

Edgewater Park Township	5	Burlington	1,539	1,575	1,969	1,909
Evesham Township	5	Burlington	22,533	23,154	27,472	37,151
Fieldsboro Borough	5	Burlington	28	31	79	76
Florence Township	5	Burlingt	2,237	2,296	3,835	2,858
Hainesport Township	5	Burlington	2,060	2,130	2,817	2,864
Lumberton Township	5	Burlington	3,124	3,366	5,265	7,003
Mansfield Township	5	Burlington	1,365	1,472	3,147	3,109
Maple Shade Township	5	Burlington	5,693	5,855	6,826	7,424
Medford Lakes Borough	5	Burlington	435	434	442	398
Medford Township	5	Burlington	8,626	8,788	10,140	10,111
Moorestown Township	5	Burlington	23,650	24,233	27,790	31,643
Mount Holly Township	5	Burlington	11,106	11,293	12,744	12,749
Mount Laurel Township	5	Burlington	32,059	33,945	44,600	63,500
New Hanover Township	5	Burlington	5,742	5,794	6,582	7,488

North Hanover Township	5	Burlington	607	605	803	554
Palmyra Borough	5	Burlington	1,806	1,846	2,253	2,199
Pemberton Borough	5	Burlington	405	411	629	447
Pemberton Township	5	Burlington	5,410	5,579	6,631	6,547
Riverside Township	5	Burlington	1,660	1,626	1,835	1,242
Riverton Borough	5	Burlington	932	919	966	753
Shamong Township	5	Burlington	883	898	1,004	1,011
Southampton Township	5	Burlington	2,466	2,544	3,002	3,774
Springfield Township	5	Burlington	546	588	1,364	1,204
Tabernacle Township	5	Burlington	1,153	1,252	1,869	2,829
Washington Township	5	Burlington	369	377	457	400
Westampton Township	5	Burlington	3,685	3,990	7,859	8,770
Willingboro Township	5	Burlington	7,079	7,304	8,570	10,471
Woodland Township	5	Burlington	285	310	780	621
Wrightstown Borough	5	Burlington	575	586	1,060	604
Audubon Borough	5	Camden	2,335	2,341	2,604	2,834
Audubon	5	Camden	52	61	120	272

Park Borough						
Barrington Borough	5	Camden	1,340	1,373	1,600	1,416
Bellmawr Borough	5	Camden	5,029	5,211	5,900	5,474
Berlin Borough	5	Camden	4,342	4,401	5,348	4,334
Berlin Township	5	Camden	5,022	5,406	7,555	10,937
Brooklawn Borough	5	Camden	1,080	1,099	1,302	1,824
Camden City	5	Camden	30,683	31,216	37,382	31,298
Cherry Hill Township	5	Camden	49,408	50,346	56,266	57,208
Chesilhurst Borough	5	Camden	126	153	424	512
Clementon Borough	5	Camden	2,307	2,343	2,681	2,322
Collingswood Borough	5	Camden	3,057	3,095	3,406	3,439
Gibbsboro Borough	5	Camden	1,700	1,732	2,336	1,747
Gloucester City	5	Camden	2,540	2,645	3,093	2,962
Gloucester Township	5	Camden	9,917	10,490	14,846	13,453
Haddon Heights Borough	5	Camden	2,135	2,174	2,447	2,596
Haddon Township	5	Camden	3,488	3,491	3,737	3,179

Haddonfield Borough	5	Camden	5,961	5,992	6,718	7,368
Hi-Nella Borough	5	Camden	58	64	178	107
Laurel Springs Borough	5	Camden	827	831	966	1,276
Lawnside Borough	5	Camden	2,599	2,759	3,472	3,618
Lindenwold Borough	5	Camden	2,072	2,219	3,113	3,097
Magnolia Borough	5	Camden	615	638	731	759
Merchantville Borough	5	Camden	827	828	836	820
Mount Ephraim Borough	5	Camden	1,092	1,102	1,178	1,161
Oaklyn Borough	5	Camden	866	868	918	927
Pennsauken Township	5	Camden	22,804	23,406	26,256	24,893
Pine Hill Borough	5	Camden	964	1,179	2,744	4,023
Pine Valley Borough	5	Camden	129	170	525	1,207
Runnemede Borough	5	Camden	2,549	2,650	3,046	3,163
Somerdale Borough	5	Camden	1,687	1,750	2,028	1,983
Stratford Borough	5	Camden	2,311	2,315	2,564	2,122

Tavistock Borough	5	Camden	0	0	0	0
Voorhees Township	5	Camden	16,928	17,780	21,105	23,146
Waterford Township	5	Camden	3,494	3,646	4,358	5,199
Winslow Township	5	Camden	6,559	7,185	13,259	11,692
Woodlynne Borough	5	Camden	192	192	216	245
Avalon Borough	6	Cape May	1,623	1,627	1,788	1,806
Cape May City	6	Cape May	5,430	5,436	7,177	8,058
Cape May Point Borough	6	Cape May	241	241	564	2,255
Dennis Township	6	Cape May	1,967	2,021	4,415	4,416
Lower Township	6	Cape May	3,329	3,442	4,936	4,304
Middle Township	6	Cape May	9,967	10,114	17,438	14,838
North Wildwood City	6	Cape May	1,906	1,904	1,906	1,803
Ocean City	6	Cape May	6,340	6,340	6,963	7,160
Sea Isle City	6	Cape May	1,415	1,415	1,570	1,620
Stone	6	Cape	1,222	1,222	1,259	1,270

Harbor Borough		May				
Upper Township	6	Cape May	3,477	3,575	8,485	7,202
West Cape May Borough	6	Cape May	286	294	543	753
West Wildwood Borough	6	Cape May	40	40	84	233
Wildwood City	6	Cape May	4,850	4,850	4,993	5,032
Wildwood Crest Borough	6	Cape May	2,296	2,292	2,296	2,143
Woodbine Borough	6	Cape May	625	636	1,754	1,043
Bridgeton City	6	Cumbereland	9,326	9,431	18,503	12,762
Commercial Township	6	Cumbereland	487	500	1,521	1,018
Deerfield Township	6	Cumbereland	723	733	2,034	1,058
Downe Township	6	Cumbereland	313	330	992	1,377
Fairfield Township	6	Cumbereland	1,396	1,461	4,193	4,941
Greenwich Township	6	Cumbereland	97	100	251	199
Hopewell Township	6	Cumbereland	244	248	754	401
Lawrence Township	6	Cumbereland	1,405	1,487	4,327	6,783

Maurice River Township	6	Cumbereland	452	466	1,417	1,046
Millville City	6	Cumbereland	10,777	10,959	29,567	17,229
Shiloh Borough	6	Cumbereland	182	197	530	1,703
Stow Creek Township	6	Cumbereland	453	491	1,392	4,239
Upper Deerfield Township	6	Cumbereland	1,965	2,015	5,480	3,985
Vineland City	6	Cumbereland	27,888	28,447	68,946	48,663
Belleville Township	2	Essex	8,800	8,805	9,527	8,274
Bloomfield Township	2	Essex	13,753	13,970	15,349	14,421
Caldwell Borough	2	Essex	2,518	2,625	3,396	3,904
Cedar Grove Township	2	Essex	5,573	6,066	8,865	9,996
City Of Orange Township	2	Essex	7,106	7,026	7,923	6,108
East Orange City	2	Essex	15,886	16,090	18,165	16,308
Essex Fells Borough	2	Essex	236	244	316	272
Fairfield Township	2	Essex	23,672	24,049	26,710	27,801

Glen Ridge Borough	2	Essex	1,130	1,138	1,280	1,427
Irvington Township	2	Essex	9,838	9,925	11,103	9,836
Livingston Township	2	Essex	23,035	23,377	27,184	30,395
Maplewood Township	2	Essex	5,390	5,300	5,623	4,449
Millburn Township	2	Essex	14,869	15,028	16,547	17,549
Montclair Township	2	Essex	13,040	13,189	14,112	14,240
Newark City	2	Essex	135,584	139,123	180,486	153,262
North Caldwell Borough	2	Essex	612	604	768	518
Nutley Township	2	Essex	10,674	10,674	11,232	9,991
Roseland Borough	2	Essex	10,986	11,102	12,243	11,091
South Orange Village Township	2	Essex	5,435	5,525	6,597	7,611
Verona Township	2	Essex	4,196	4,329	5,174	4,970
West Caldwell Township	2	Essex	8,349	8,507	9,271	8,614
West Orange Township	2	Essex	17,394	18,188	23,192	21,395

Clayton Borough	5	Gloucester	1,068	1,093	1,963	1,289
Deptford Township	5	Gloucester	10,561	11,039	17,000	14,575
East Greenwich Township	5	Gloucester	1,315	1,384	2,157	2,143
Elk Township	5	Gloucester	455	501	1,467	1,194
Franklin Township	5	Gloucester	2,250	2,321	3,935	2,944
Glassboro Borough	5	Gloucester	5,392	5,607	8,705	7,703
Greenwich Township	5	Gloucester	1,175	1,153	1,487	893
Harrison Township	5	Gloucester	1,799	1,968	3,371	4,436
Logan Township	5	Gloucester	3,678	3,880	9,709	6,148
Mantua Township	5	Gloucester	7,346	8,234	14,177	23,776
Monroe Township	5	Gloucester	6,082	6,470	12,231	11,147
National Park Borough	5	Gloucester	265	277	375	403
Newfield Borough	5	Gloucester	1,188	1,192	1,256	1,151
Paulsboro Borough	5	Gloucester	3,147	3,260	4,048	4,315
Pitman Borough	5	Gloucester	2,464	2,442	2,826	2,093
South Harrison	5	Gloucester	386	416	620	1,111

Township						
Swedesboro Borough	5	Gloucester	5,709	5,880	9,535	31,858
Washington Township	5	Gloucester	10,604	10,905	13,999	13,420
Wenonah Borough	5	Gloucester	734	749	877	1,150
West Deptford Township	5	Gloucester	8,050	8,827	16,125	18,459
Westville Borough	5	Gloucester	2,317	2,355	2,576	2,486
Woodbury City	5	Gloucester	10,963	11,015	12,374	13,693
Woodbury Heights Borough	5	Gloucester	1,965	2,029	2,318	2,443
Woolwich Township	5	Gloucester	662	926	2,493	5,657
Bayonne City	1	Hudson	14,820	15,017	27,982	16,941
East Newark Borough	1	Hudson	855	836	878	684
Guttenberg Town	1	Hudson	1,372	1,342	1,377	1,094
Harrison Town	1	Hudson	3,937	3,919	6,606	3,756
Hoboken City	1	Hudson	14,199	14,507	17,066	17,927
Jersey City	1	Hudson	96,706	101,198	163,253	153,660
Kearny Town	1	Hudson	18,486	18,641	21,774	20,063

North Bergen Township	1	Hudson	20,876	21,182	30,121	24,140
Secaucus Town	1	Hudson	37,364	37,540	41,112	39,130
Union City	1	Hudson	11,719	12,254	18,380	18,486
Weehawken Township	1	Hudson	8,046	8,555	13,242	15,072
West New York Town	1	Hudson	7,237	7,258	8,644	7,454
Alexandria Township	3	Hunterdon	305	307	663	340
Bethlehem Township	3	Hunterdon	362	357	370	277
Bloomsbury Borough	3	Hunterdon	697	697	879	1,229
Califon Borough	3	Hunterdon	924	924	1,257	1,907
Clinton Town	3	Hunterdon	2,443	2,546	4,089	5,140
Clinton Township	3	Hunterdon	4,651	4,854	8,608	8,007
Delaware Township	3	Hunterdon	324	340	1,287	762
East Amwell Township	3	Hunterdon	1,042	1,103	2,481	2,870
Flemington Borough	3	Hunterdon	6,642	6,673	7,012	7,119
Franklin Township	3	Hunterdon	1,037	1,167	3,808	8,587
Frenchtown	3	Hunterdon	766	778	967	1,010

Borough						
Glen Gardner Borough	3	Hunterdon	570	570	732	1,045
Hampton Borough	3	Hunterdon	636	635	637	599
High Bridge Borough	3	Hunterdon	571	586	935	885
Holland Township	3	Hunterdon	210	208	395	169
Kingwood Township	3	Hunterdon	357	368	1,239	603
Lambertville City	3	Hunterdon	1,870	1,983	5,796	5,341
Lebanon Borough	3	Hunterdon	2,049	2,137	4,099	6,287
Lebanon Township	3	Hunterdon	1,066	1,066	1,131	1,303
Milford Borough	3	Hunterdon	1,085	1,106	1,480	1,504
Raritan Township	3	Hunterdon	8,633	8,998	17,565	18,012
Readington Township	3	Hunterdon	6,520	6,822	12,916	14,141
Stockton Borough	3	Hunterdon	425	438	655	724
Tewksbury Township	3	Hunterdon	826	929	2,634	5,206
Union Township	3	Hunterdon	1,267	1,252	1,638	1,004
West Amwell Township	3	Hunterdon	262	270	968	449

East Windsor Township	4	Mercer	6,876	7,143	14,936	9,393
Ewing Township	4	Mercer	14,832	15,430	30,601	20,943
Hamilton Township	4	Mercer	27,339	28,299	46,226	35,207
Hightstown Borough	4	Mercer	3,846	3,951	5,950	5,446
Hopewell Borough	4	Mercer	611	648	1,290	1,069
Hopewell Township	4	Mercer	4,165	4,841	14,508	11,751
Lawrence Township	4	Mercer	22,642	23,524	41,152	31,036
Pennington Borough	4	Mercer	4,149	4,200	10,659	20,556
Princeton Borough	4	Mercer	19,613	19,792	25,863	25,408
Princeton Township	4	Mercer	10,173	10,585	24,948	31,712
Trenton City	4	Mercer	30,672	31,839	53,665	42,220
Washington Township	4	Mercer	4,822	5,243	15,124	24,715
West Windsor Township	4	Mercer	20,032	21,064	40,189	36,664
Carteret Borough	3	Middlesex	9,696	10,040	16,173	19,220
Cranbury Township	3	Middlesex	13,632	13,901	17,922	20,006
Dunellen Borough	3	Middlesex	1,299	1,303	1,326	1,373

East Brunswick Township	3	Middlesex	22,559	22,671	28,017	24,471
Edison Township	3	Middlesex	76,620	78,030	102,358	105,885
Helmetta Borough	3	Middlesex	175	191	581	925
Highland Park Borough	3	Middlesex	2,607	2,661	4,646	3,907
Jamesburg Borough	3	Middlesex	4,225	4,294	11,028	39,536
Metuchen Borough	3	Middlesex	5,828	5,914	7,340	7,768
Middlesex Borough	3	Middlesex	6,723	6,773	7,300	7,523
Milltown Borough	3	Middlesex	2,661	2,755	4,837	7,068
Monroe Township	3	Middlesex	4,937	5,583	20,041	34,165
New Brunswick City	3	Middlesex	34,102	34,812	54,197	51,093
North Brunswick Township	3	Middlesex	16,754	17,285	34,376	30,060
Old Bridge Township	3	Middlesex	11,863	12,363	26,336	23,720
Perth Amboy City	3	Middlesex	12,447	12,569	19,197	15,070
Piscataway Township	3	Middlesex	33,404	33,879	49,812	44,062

Plainsboro Township	3	Middlesex	12,667	13,071	30,992	23,347
Sayreville Borough	3	Middlesex	7,352	7,510	18,969	11,147
South Amboy City	3	Middlesex	2,811	2,848	4,655	3,644
South Brunswick Township	3	Middlesex	21,403	22,129	46,473	39,829
South Plainfield Borough	3	Middlesex	19,350	19,403	20,824	20,114
South River Borough	3	Middlesex	3,211	3,339	5,877	6,913
Spotswood Borough	3	Middlesex	2,460	2,493	3,168	3,200
Woodbridge Township	3	Middlesex	49,819	50,362	60,500	61,338
Aberdeen Township	4	Monmouth	4,412	4,642	8,747	6,345
Allenhurst Borough	4	Monmouth	546	546	546	532
Allentown Borough	4	Monmouth	1,643	1,666	4,291	8,482
Asbury Park City	4	Monmouth	3,613	3,732	5,753	4,323
Atlantic Highlands Borough	4	Monmouth	2,308	2,362	4,942	5,982
Avon-By-The-Sea Borough	4	Monmouth	437	437	445	365

Belmar Borough	4	Monmouth	2,155	2,162	2,237	2,083
Bradley Beach Borough	4	Monmouth	814	825	1,057	1,007
Brielle Borough	4	Monmouth	1,254	1,280	1,883	1,783
Colts Neck Township	4	Monmouth	2,558	2,678	6,122	7,070
Deal Borough	4	Monmouth	608	611	717	706
Eatontown Borough	4	Monmouth	12,330	13,145	25,408	20,645
Englishtown Borough	4	Monmouth	2,783	2,841	4,103	3,848
Fair Haven Borough	4	Monmouth	1,256	1,258	2,310	2,935
Farmingdale Borough	4	Monmouth	3,674	3,682	7,516	10,729
Freehold Borough	4	Monmouth	13,796	13,926	22,404	24,023
Freehold Township	4	Monmouth	14,336	15,283	29,780	22,613
Hazlet Township	4	Monmouth	6,327	6,552	11,076	10,197
Highlands Borough	4	Monmouth	957	1,025	2,214	1,656
Holmdel Township	4	Monmouth	10,587	10,766	13,745	10,772
Howell Township	4	Monmouth	8,677	9,518	28,700	18,777
Interlaken	4	Monmouth	48	48	126	310

Borough						
Keansburg Borough	4	Monmouth	1,315	1,320	2,141	2,425
Keyport Borough	4	Monmouth	2,485	2,577	4,652	4,424
Lake Como Borough	4	Monmouth	354	354	354	338
Little Silver Borough	4	Monmouth	2,292	2,302	3,710	4,156
Loch Arbour Village	4	Monmouth	53	53	165	496
Long Branch City	4	Monmouth	8,680	8,864	11,907	9,047
Manalapan Township	4	Monmouth	8,490	8,982	20,754	22,752
Manasquan Borough	4	Monmouth	5,708	5,715	11,742	17,104
Marlboro Township	4	Monmouth	8,180	8,874	19,495	16,891
Matawan Borough	4	Monmouth	4,112	4,200	6,967	6,948
Middletown Township	4	Monmouth	16,555	17,040	22,272	19,284
Millstone Township	4	Monmouth	1,350	1,500	4,532	4,087
Monmouth Beach Borough	4	Monmouth	556	556	557	536
Neptune City	4	Monmouth	6,009	6,062	13,917	22,311

Borough						
Neptune Township	4	Monmouth	10,886	11,403	18,506	14,025
Ocean Township	4	Monmouth	8,879	9,260	14,276	11,742
Oceanport Borough	4	Monmouth	7,775	7,820	8,919	8,700
Red Bank Borough	4	Monmouth	16,097	16,208	21,642	21,758
Roosevelt Borough	4	Monmouth	94	102	254	277
Rumson Borough	4	Monmouth	1,588	1,595	2,871	3,491
Sea Bright Borough	4	Monmouth	821	821	925	939
Sea Girt Borough	4	Monmouth	1,919	1,929	3,672	4,696
Shrewsbury Borough	4	Monmouth	4,472	4,534	5,936	5,648
Shrewsbury Township	4	Monmouth	1,304	1,305	2,608	3,676
Spring Lake Borough	4	Monmouth	1,122	1,124	1,223	1,222
Spring Lake Heights Borough	4	Monmouth	1,344	1,370	2,323	2,380
Tinton Falls Borough	4	Monmouth	6,652	7,411	19,815	15,420

Union Beach Borough	4	Monmouth	958	975	1,150	1,007
Upper Freehold Township	4	Monmouth	1,452	1,632	4,864	7,953
Wall Township	4	Monmouth	9,472	10,365	27,892	16,479
West Long Branch Borough	4	Monmouth	5,474	5,550	8,648	8,802
Boonton Town	2	Morris	3,045	3,196	4,237	4,597
Boonton Township	2	Morris	1,457	1,499	1,864	2,145
Butler Borough	2	Morris	2,837	2,971	3,876	4,048
Chatham Borough	2	Morris	3,902	3,939	4,461	4,958
Chatham Township	2	Morris	1,872	1,943	2,492	2,465
Chester Borough	2	Morris	2,711	2,766	3,206	3,454
Chester Township	2	Morris	1,288	1,321	1,522	1,554
Denville Township	2	Morris	8,967	9,541	13,092	14,348
Dover Town	2	Morris	6,993	6,789	7,353	4,906
East Hanover Township	2	Morris	14,689	14,995	18,160	20,885
Florham	2	Morris	13,554	14,166	18,234	17,916

Park Borough						
Hanover Township	2	Morris	16,633	17,016	20,066	19,495
Harding Township	2	Morris	904	965	1,359	1,618
Jefferson Township	2	Morris	2,389	2,461	2,946	3,130
Kinnelon Borough	2	Morris	1,898	1,900	2,352	3,232
Lincoln Park Borough	2	Morris	3,439	3,610	4,824	4,831
Long Hill Township	2	Morris	2,644	2,709	3,198	3,182
Madison Borough	2	Morris	9,355	9,778	13,877	19,436
Mendham Borough	2	Morris	1,609	1,667	2,512	4,509
Mendham Township	2	Morris	798	832	1,053	1,043
Mine Hill Township	2	Morris	481	529	835	992
Montville Township	2	Morris	11,587	11,884	16,047	22,225
Morris Plains Borough	2	Morris	10,124	10,354	11,838	12,220
Morris Township	2	Morris	3,446	3,464	5,185	3,418
Morristown Town	2	Morris	35,096	35,495	37,700	37,481

Mount Arlington Borough	2	Morris	1,346	1,407	2,036	1,944
Mount Olive Township	2	Morris	10,930	11,249	16,263	26,491
Mountain Lakes Borough	2	Morris	2,783	2,859	3,771	4,905
Netcong Borough	2	Morris	921	943	1,209	1,105
Parsippany-Troy Hills Township	2	Morris	50,588	53,395	71,529	77,930
Pequannock Township	2	Morris	6,093	6,212	7,344	8,185
Randolph Township	2	Morris	7,814	8,160	10,488	10,779
Riverdale Borough	2	Morris	2,591	2,743	4,239	4,057
Rockaway Borough	2	Morris	6,299	6,530	8,955	12,038
Rockaway Township	2	Morris	10,609	11,445	17,013	17,656
Roxbury Township	2	Morris	8,496	9,008	12,799	12,082
Victory Gardens Borough	2	Morris	110	118	183	210
Washington Township	2	Morris	2,188	2,208	2,786	3,743
Wharton Borough	2	Morris	3,125	3,318	5,491	13,155

Barnegat Light Borough	4	Ocean	348	348	451	472
Barnegat Township	4	Ocean	1,812	1,964	7,766	6,241
Bay Head Borough	4	Ocean	436	435	440	421
Beach Haven Borough	4	Ocean	1,731	1,731	1,989	2,027
Beachwood Borough	4	Ocean	864	920	2,296	2,060
Berkeley Township	4	Ocean	4,201	4,527	15,735	10,168
Brick Township	4	Ocean	17,843	18,693	38,108	37,782
Eagleswood Township	4	Ocean	431	476	1,887	2,119
Harvey Cedars Borough	4	Ocean	225	225	319	346
Island Heights Borough	4	Ocean	270	276	730	1,443
Jackson Township	4	Ocean	10,229	10,620	30,599	18,737
Lacey Township	4	Ocean	5,247	5,504	17,318	11,453
Lakehurst Borough	4	Ocean	1,573	1,647	3,487	3,625
Lakewood Township	4	Ocean	23,647	24,789	68,439	50,928
Lavallette	4	Ocean	808	806	808	769

Borough						
Little Egg Harbor Township	4	Ocean	2,134	2,399	8,986	11,257
Long Beach Township	4	Ocean	1,313	1,313	1,557	1,594
Manchester Township	4	Ocean	3,460	3,696	14,667	9,758
Mantoloking Borough	4	Ocean	180	180	439	885
Ocean Gate Borough	4	Ocean	107	107	170	189
Ocean Township	4	Ocean	854	928	3,556	3,168
Pine Beach Borough	4	Ocean	517	520	1,306	2,662
Plumsted Township	4	Ocean	981	1,066	3,254	3,318
Point Pleasant Beach Borough	4	Ocean	3,872	3,894	5,004	5,021
Point Pleasant Borough	4	Ocean	4,405	4,387	4,616	4,124
Seaside Heights Borough	4	Ocean	1,307	1,325	1,760	1,506
Seaside Park Borough	4	Ocean	863	865	1,583	1,994

Ship Bottom Borough	4	Ocean	1,131	1,131	1,375	1,418
South Toms River Borough	4	Ocean	432	471	1,495	1,765
Stafford Township	4	Ocean	8,080	8,669	25,567	22,430
Surf City Borough	4	Ocean	652	652	1,236	1,654
Toms River Township	4	Ocean	40,054	41,176	79,573	62,240
Tuckerton Borough	4	Ocean	1,116	1,159	3,028	2,069
Bloomingdale Borough	1	Passiac	1,256	1,471	2,974	3,625
Clifton City	1	Passiac	30,665	30,959	36,540	29,738
Haledon Borough	1	Passiac	1,553	1,695	3,579	2,623
Hawthorne Borough	1	Passiac	5,651	5,946	7,674	7,034
Little Falls Township	1	Passiac	5,539	5,729	6,988	6,309
North Haledon Borough	1	Passiac	1,579	1,735	2,885	3,183
Passaic City	1	Passiac	19,023	19,555	23,005	23,042
Paterson City	1	Passiac	38,014	38,505	42,554	37,757

Pompton Lakes Borough	1	Passiac	1,987	2,092	3,121	2,578
Prospect Park Borough	1	Passiac	1,002	1,133	2,245	3,331
Ringwood Borough	1	Passiac	2,284	2,284	2,858	3,770
Totowa Borough	1	Passiac	11,939	12,547	18,625	15,554
Wanaque Borough	1	Passiac	2,043	2,131	3,024	2,481
Wayne Township	1	Passiac	36,375	37,557	45,538	39,438
West Milford Township	1	Passiac	4,647	4,647	4,682	4,729
West Paterson Borough	1	Passiac	5,135	5,536	8,972	8,103
Alloway Township	6	Salem	594	619	1,731	1,820
Carneys Point Township	6	Salem	2,001	2,061	5,848	4,550
Elmer Borough	6	Salem	1,527	1,538	1,987	1,867
Elsinboro Township	6	Salem	134	131	159	75
Lower Alloways Creek Township	6	Salem	964	960	1,896	867
Mannington Township	6	Salem	942	952	2,512	1,262

Oldmans Township	6	Salem	674	682	1,700	918
Penns Grove Borough	6	Salem	1,112	1,115	1,549	1,207
Pennsville Township	6	Salem	4,160	4,176	7,318	4,635
Pilesgrove Township	6	Salem	976	1,060	2,816	9,133
Pittsgrove Township	6	Salem	2,702	2,918	7,334	21,818
Quinton Township	6	Salem	145	147	448	222
Salem City	6	Salem	3,068	3,111	6,163	4,526
Upper Pittsgrove Township	6	Salem	982	1,029	2,815	3,579
Woodstown Borough	6	Salem	1,651	1,668	2,957	2,190
Bedminster Township	3	Somerset	7,092	7,373	12,253	13,393
Bernards Township	3	Somerset	10,883	10,803	11,685	9,628
Bernardsville Borough	3	Somerset	3,083	3,174	3,844	3,867
Bound Brook Borough	3	Somerset	4,313	4,326	4,862	5,882
Branchburg Township	3	Somerset	8,424	8,811	15,443	17,664
Bridgewater Township	3	Somerset	32,941	34,145	48,633	56,424
Far	3	Somerset	933	950	1,157	1,251

Hills Borough						
Franklin Township	3	Somerset	32,403	32,964	46,999	41,968
Green Brook Township	3	Somerset	3,863	3,958	5,554	7,005
Hillsborough Township	3	Somerset	7,791	8,138	19,142	15,949
Manville Borough	3	Somerset	2,294	2,351	4,235	6,995
Millstone Borough	3	Somerset	114	118	217	339
Montgomery Township	3	Somerset	9,404	9,791	15,977	18,306
North Plainfield Borough	3	Somerset	3,905	3,924	4,075	4,191
Peapack-Gladstone Borough	3	Somerset	1,483	1,463	1,837	1,184
Raritan Borough	3	Somerset	9,550	9,869	15,469	16,414
Rocky Hill Borough	3	Somerset	351	353	417	394
Somerville Borough	3	Somerset	14,481	14,538	15,430	15,443
South Bound Brook Borough	3	Somerset	510	515	558	620
Warren Township	3	Somerset	10,039	10,131	11,487	11,551

Watchung Borough	3	Somerset	6,296	6,526	9,478	11,300
Andover Borough	1	Sussex	1,497	1,597	3,086	2,556
Andover Township	1	Sussex	859	985	2,593	2,720
Branchville Borough	1	Sussex	1,637	1,662	1,848	1,904
Byram Township	1	Sussex	320	336	479	534
Frankford Township	1	Sussex	718	780	2,113	1,470
Franklin Borough	1	Sussex	1,278	1,337	2,493	1,700
Fredon Township	1	Sussex	206	212	436	250
Green Township	1	Sussex	209	233	571	549
Hamburg Borough	1	Sussex	1,046	1,069	1,479	1,160
Hampton Township	1	Sussex	646	710	1,733	1,259
Hardyston Township	1	Sussex	958	1,127	2,805	3,500
Hopatcong Borough	1	Sussex	1,135	1,210	2,245	1,767
Lafayette Township	1	Sussex	1,738	1,944	4,330	3,777
Montague Township	1	Sussex	546	580	1,502	890
Newton Town	1	Sussex	8,169	8,691	14,782	13,560
Ogdensburg Borough	1	Sussex	250	256	290	283

Sandyston Township	1	Sussex	150	173	489	487
Sparta Township	1	Sussex	6,918	7,237	12,152	17,926
Stanhope Borough	1	Sussex	2,240	2,295	3,723	6,030
Stillwater Township	1	Sussex	345	378	962	648
Sussex Borough	1	Sussex	2,152	2,181	2,640	2,208
Vernon Township	1	Sussex	3,059	3,160	3,985	3,763
Walpack Township	1	Sussex	97	97	239	908
Wantage Township	1	Sussex	814	875	2,466	1,500
Berkeley Heights Township	2	Union	5,187	5,277	6,463	5,132
Clark Township	2	Union	7,275	7,416	8,256	8,320
Cranford Township	2	Union	13,866	14,083	16,109	17,493
Elizabeth City	2	Union	44,565	46,445	57,805	51,319
Fanwood Borough	2	Union	1,579	1,593	1,652	1,552
Garwood Borough	2	Union	2,222	2,233	2,279	2,175
Hillside Township	2	Union	6,572	6,725	7,510	6,773
Kenilworth Borough	2	Union	10,392	10,571	12,227	13,370
Linden	2	Union	19,885	20,835	28,302	22,952

City						
Mountainside Borough	2	Union	5,292	5,357	5,867	6,123
New Providence Borough	2	Union	8,804	8,910	9,351	8,527
Plainfield City	2	Union	9,624	9,749	10,269	9,385
Rahway City	2	Union	13,178	13,407	14,725	14,714
Roselle Borough	2	Union	3,899	3,887	4,112	3,346
Roselle Park Borough	2	Union	2,299	2,324	2,430	2,219
Scotch Plains Township	2	Union	5,760	5,847	6,858	7,762
Springfield Township	2	Union	10,557	10,665	12,934	9,941
Summit City	2	Union	13,723	13,854	14,487	12,865
Union Township	2	Union	34,662	35,762	43,326	46,743
Westfield Town	2	Union	10,362	10,497	12,259	13,960
Winfield Township	2	Union	107	114	160	203
Allamuchy Township	2	Warren	343	348	501	422
Alpha Borough	2	Warren	515	532	1,062	829
Belvidere Town	2	Warren	2,102	2,142	3,109	2,784

Blairstown Township	2	Warren	1,708	1,765	3,111	2,787
Franklin Township	2	Warren	935	989	1,662	1,756
Frelinghuysen Township	2	Warren	236	247	477	455
Greenwich Township	2	Warren	654	689	1,202	1,171
Hackettstown Town	2	Warren	9,167	9,369	11,657	12,194
Hardwick Township	2	Warren	76	91	183	711
Harmony Township	2	Warren	219	223	496	285
Hope Township	2	Warren	304	307	567	337
Independence Township	2	Warren	388	387	563	375
Knowlton Township	2	Warren	758	789	1,599	1,373
Liberty Township	2	Warren	553	557	627	703
Lopatcong Township	2	Warren	1,134	1,159	2,049	1,570
Mansfield Township	2	Warren	1,009	1,021	1,517	1,154
Oxford Township	2	Warren	360	372	767	568
Phillipsburg Town	2	Warren	9,055	9,334	15,192	13,733
Pohatcong Township	2	Warren	1,740	1,948	3,593	16,282
Washington Borough	2	Warren	2,269	2,316	3,524	3,087

Washington Township	2	Warren	1,915	1,887	2,464	1,540
White Township	2	Warren	756	772	1,669	1,000
New Jersey			3,649,887	3,753,156	5,461,171	5,449,473

Source: Econsult Corporation (2007)

Municipality	COAH Region	County	Employment Allocated 2018	Net Changes Between 2004 and 2018	Annual Rate of Change 2004 to 2018
Absecon City	6	Atlantic	3,860	497	0.99%
Atlantic City	6	Atlantic	58,174	-1,447	-0.18%
Brigantine City	6	Atlantic	2,038	6	0.02%
Buena Borough	6	Atlantic	1,807	152	0.63%
Buena Vista Township	6	Atlantic	1,518	259	1.35%
Corbin City	6	Atlantic	620	72	0.88%
Egg Harbor City	6	Atlantic	6,843	2,974	4.16%
Egg Harbor	6	Atlantic	27,755	10,349	3.39%

Township					
Estell Manor City	6	Atlantic	431	148	3.06%
Folsom Borough	6	Atlantic	1,058	163	1.20%
Galloway Township	6	Atlantic	10,555	2,736	2.17%
Hamilton Township	6	Atlantic	13,681	2,816	1.66%
Hammonton Town	6	Atlantic	10,178	1,549	1.19%
Linwood City	6	Atlantic	2,988	132	0.32%
Longport Borough	6	Atlantic	210	-16	-0.53%
Margate City	6	Atlantic	1,670	9	0.04%
Mullica Township	6	Atlantic	705	97	1.06%
Northfield City	6	Atlantic	5,676	827	1.13%
Pleasantville City	6	Atlantic	8,462	746	0.66%
Port Republic City	6	Atlantic	106	11	0.76%
Somers Point City	6	Atlantic	6,858	648	0.71%
Ventnor City	6	Atlantic	2,027	0	0.00%
Weymouth Township	6	Atlantic	17	-3	-1.16%

Allendale Borough	1	Bergen	6,940	205	0.21%
Alpine Borough	1	Bergen	437	76	1.38%
Bergenfield Borough	1	Bergen	4,630	338	0.54%
Bogota Borough	1	Bergen	2,039	196	0.72%
Carlstadt Borough	1	Bergen	13,555	130	0.07%
Cliffside Park Borough	1	Bergen	3,277	333	0.77%
Closter Borough	1	Bergen	3,545	357	0.76%
Cresskill Borough	1	Bergen	2,148	223	0.79%
Demarest Borough	1	Bergen	1,188	149	0.96%
Dumont Borough	1	Bergen	2,321	175	0.56%
East Rutherford Borough	1	Bergen	11,127	1,213	0.83%
Edgewater Borough	1	Bergen	8,774	4,374	5.05%
Elmwood Park Borough	1	Bergen	10,407	2,244	1.75%
Emerson Borough	1	Bergen	3,464	646	1.48%
Englewood City	1	Bergen	15,821	1,029	0.48%
Englewood	1	Bergen	9,673	937	0.73%

Cliffs Borough					
Fair Lawn Borough	1	Bergen	12,339	836	0.50%
Fairview Borough	1	Bergen	4,563	1,255	2.32%
Fort Lee Borough	1	Bergen	20,141	1,817	0.68%
Franklin Lakes Borough	1	Bergen	8,485	745	0.66%
Garfield City	1	Bergen	7,218	1,022	1.10%
Glen Rock Borough	1	Bergen	3,637	101	0.20%
Hackensack City	1	Bergen	49,720	5,147	0.78%
Harrington Park Borough	1	Bergen	913	159	1.38%
Hasbrouck Heights Borough	1	Bergen	4,687	333	0.53%
Haworth Borough	1	Bergen	875	152	1.37%
Hillsdale Borough	1	Bergen	2,840	473	1.31%
Ho-Ho-Kus Borough	1	Bergen	1,279	135	0.80%
Leonia Borough	1	Bergen	2,232	214	0.72%

Little Ferry Borough	1	Bergen	3,684	522	1.10%
Lodi Borough	1	Bergen	7,403	1,476	1.60%
Lyndhurst Township	1	Bergen	12,496	406	0.24%
Mahwah Township	1	Bergen	19,870	5,695	2.44%
Maywood Borough	1	Bergen	3,968	340	0.64%
Midland Park Borough	1	Bergen	3,969	271	0.51%
Montvale Borough	1	Bergen	12,652	2,444	1.54%
Moonachie Borough	1	Bergen	7,174	176	0.18%
New Milford Borough	1	Bergen	1,909	140	0.55%
North Arlington Borough	1	Bergen	3,310	163	0.36%
Northvale Borough	1	Bergen	4,254	112	0.19%
Norwood Borough	1	Bergen	2,209	277	0.96%
Oakland Borough	1	Bergen	7,812	769	0.74%
Old Tappan Borough	1	Bergen	2,227	421	1.51%
Oradell	1	Bergen	3,453	445	0.99%

Borough					
Palisades Park Borough	1	Bergen	5,054	1,039	1.66%
Paramus Borough	1	Bergen	47,158	3,708	0.59%
Park Ridge Borough	1	Bergen	3,925	312	0.59%
Ramsey Borough	1	Bergen	13,144	2,314	1.39%
Ridgefield Borough	1	Bergen	5,898	620	0.80%
Ridgefield Park Village	1	Bergen	6,297	1,068	1.34%
Ridgewood Village	1	Bergen	12,100	512	0.31%
River Edge Borough	1	Bergen	3,034	115	0.28%
River Vale Township	1	Bergen	1,683	186	0.84%
Rochelle Park Township	1	Bergen	5,308	281	0.39%
Rockleigh Borough	1	Bergen	2,766	844	2.63%
Rutherford Borough	1	Bergen	8,331	511	0.45%
Saddle Brook Township	1	Bergen	10,963	1,176	0.81%

Saddle River Borough	1	Bergen	1,041	270	2.16%
South Hackensack Township	1	Bergen	5,398	183	0.25%
Teaneck Township	1	Bergen	15,141	1,286	0.64%
Tenafly Borough	1	Bergen	4,825	521	0.82%
Teterboro Borough	1	Bergen	9,030	627	0.51%
Upper Saddle River Borough	1	Bergen	4,212	214	0.37%
Waldwick Borough	1	Bergen	3,380	417	0.95%
Wallington Borough	1	Bergen	3,976	1,283	2.82%
Washington Township	1	Bergen	1,395	283	1.63%
Westwood Borough	1	Bergen	6,240	297	0.35%
Woodcliff Lake Borough	1	Bergen	5,225	820	1.23%
Wood-Ridge Borough	1	Bergen	4,995	1,462	2.50%
Wyckoff Township	1	Bergen	5,936	790	1.03%
Bass River Township	5	Burlington	1,859	589	2.76%

Beverly City	5	Burlington	625	120	1.54%
Bordentown City	5	Burlington	2,137	310	1.13%
Bordentown Township	5	Burlington	6,829	1,907	2.37%
Burlington City	5	Burlington	7,970	1,919	1.99%
Burlington Township	5	Burlington	15,057	3,362	1.82%
Chesterfield Township	5	Burlington	756	274	3.27%
Cinnaminson Township	5	Burlington	8,991	1,250	1.07%
Delanco Township	5	Burlington	4,564	1,819	3.70%
Delran Township	5	Burlington	5,727	805	1.09%
Eastampton Township	5	Burlington	1,250	551	4.24%
Edgewater Park Township	5	Burlington	1,830	255	1.08%
Evesham Township	5	Burlington	27,500	4,346	1.24%
Fieldsboro Borough	5	Burlington	49	19	3.45%
Florence Township	5	Burlingt	2,707	412	1.19%
Hainesport Township	5	Burlington	2,618	488	1.49%
Lumberton Township	5	Burlington	5,057	1,692	2.95%
Mansfield	5	Burlington	2,224	752	2.99%

Township					
Maple Shade Township	5	Burlington	6,991	1,135	1.27%
Medford Lakes Borough	5	Burlington	424	-10	-0.16%
Medford Township	5	Burlington	9,924	1,136	0.87%
Moorestown Township	5	Burlington	28,315	4,082	1.12%
Mount Holly Township	5	Burlington	12,599	1,306	0.78%
Mount Laurel Township	5	Burlington	47,145	13,200	2.37%
New Hanover Township	5	Burlington	6,158	364	0.44%
North Hanover Township	5	Burlington	591	-14	-0.17%
Palmyra Borough	5	Burlington	2,124	279	1.01%
Pemberton Borough	5	Burlington	450	39	0.66%
Pemberton Township	5	Burlington	6,765	1,185	1.39%
Riverside Township	5	Burlington	1,387	-239	-1.13%
Riverton Borough	5	Burlington	828	-91	-0.74%
Shamong	5	Burlington	1,000	103	0.78%

Township					
Southampton Township	5	Burlington	3,093	548	1.40%
Springfield Township	5	Burlington	880	292	2.92%
Tabernacle Township	5	Burlington	1,944	692	3.19%
Washington Township	5	Burlington	430	54	0.95%
Westampton Township	5	Burlington	6,125	2,135	3.11%
Willingboro Township	5	Burlington	8,880	1,575	1.40%
Woodland Township	5	Burlington	485	175	3.25%
Wrightstown Borough	5	Burlington	664	78	0.89%
Audubon Borough	5	Camden	2,383	42	0.13%
Audubon Park Borough	5	Camden	122	61	5.09%
Barrington Borough	5	Camden	1,605	232	1.12%
Bellmawr Borough	5	Camden	6,484	1,273	1.57%
Berlin Borough	5	Camden	4,811	410	0.64%
Berlin Township	5	Camden	8,090	2,685	2.92%
Brooklawn Borough	5	Camden	1,234	135	0.83%
Camden City	5	Camden	34,948	3,731	0.81%

Cherry Hill Township	5	Camden	56,915	6,568	0.88%
Chesilhurst Borough	5	Camden	345	191	5.96%
Clementon Borough	5	Camden	2,597	253	0.74%
Collingswood Borough	5	Camden	3,361	266	0.59%
Gibbsboro Borough	5	Camden	1,954	222	0.87%
Gloucester City	5	Camden	3,380	735	1.77%
Gloucester Township	5	Camden	14,499	4,010	2.34%
Haddon Heights Borough	5	Camden	2,447	273	0.85%
Haddon Township	5	Camden	3,514	23	0.05%
Haddonfield Borough	5	Camden	6,210	218	0.26%
Hi-Nella Borough	5	Camden	105	41	3.61%
Laurel Springs Borough	5	Camden	858	27	0.23%
Lawnside Borough	5	Camden	3,880	1,121	2.47%
Lindenwold Borough	5	Camden	3,248	1,029	2.76%
Magnolia Borough	5	Camden	797	159	1.60%
Merchantville	5	Camden	836	8	0.07%

Borough					
Mount Ephraim Borough	5	Camden	1,168	67	0.42%
Oaklyn Borough	5	Camden	885	17	0.14%
Pennsauken Township	5	Camden	27,618	4,213	1.19%
Pine Hill Borough	5	Camden	2,686	1,507	6.06%
Pine Valley Borough	5	Camden	459	289	7.34%
Runnemede Borough	5	Camden	3,356	706	1.70%
Somerdale Borough	5	Camden	2,194	443	1.63%
Stratford Borough	5	Camden	2,347	31	0.10%
Tavistock Borough	5	Camden	0	0	#DIV/0!
Voorhees Township	5	Camden	23,741	5,961	2.09%
Waterford Township	5	Camden	4,706	1,061	1.84%
Winslow Township	5	Camden	11,566	4,381	3.46%
Woodlynne Borough	5	Camden	193	1	0.03%
Avalon Borough	6	Cape May	1,655	28	0.12%
Cape May	6	Cape May	5,476	40	0.05%

City					
Cape May Point Borough	6	Cape May	242	1	0.03%
Dennis Township	6	Cape May	2,401	380	1.24%
Lower Township	6	Cape May	4,235	793	1.49%
Middle Township	6	Cape May	11,142	1,029	0.69%
North Wildwood City	6	Cape May	1,886	-17	-0.07%
Ocean City	6	Cape May	6,340	0	0.00%
Sea Isle City	6	Cape May	1,415	0	0.00%
Stone Harbor Borough	6	Cape May	1,222	0	0.00%
Upper Township	6	Cape May	4,262	688	1.26%
West Cape May Borough	6	Cape May	353	59	1.31%
West Wildwood Borough	6	Cape May	40	0	0.00%
Wildwood City	6	Cape May	4,850	0	0.00%
Wildwood Crest	6	Cape May	2,264	-28	-0.09%

Borough					
Woodbine Borough	6	Cape May	711	75	0.80%
Bridgeton City	6	Cumbereland	10,163	732	0.54%
Commercial Township	6	Cumbereland	591	91	1.20%
Deerfield Township	6	Cumbereland	802	69	0.64%
Downe Township	6	Cumbereland	451	120	2.25%
Fairfield Township	6	Cumbereland	1,916	455	1.96%
Greenwich Township	6	Cumbereland	117	18	1.17%
Hopewell Township	6	Cumbereland	279	31	0.83%
Lawrence Township	6	Cumbereland	2,063	576	2.37%
Maurice River Township	6	Cumbereland	562	96	1.35%
Millville City	6	Cumbereland	12,230	1,272	0.79%
Shiloh Borough	6	Cumbereland	306	108	3.17%
Stow Creek Township	6	Cumbereland	761	269	3.17%
Upper Deerfield Township	6	Cumbereland	2,367	352	1.16%
Vineland City	6	Cumbereland	32,363	3,915	0.93%

Belleville Township	2	Essex	8,841	36	0.03%
Bloomfield Township	2	Essex	15,490	1,520	0.74%
Caldwell Borough	2	Essex	3,371	746	1.80%
Cedar Grove Township	2	Essex	9,517	3,451	3.27%
City Of Orange Township	2	Essex	6,462	-563	-0.60%
East Orange City	2	Essex	17,515	1,425	0.61%
Essex Fells Borough	2	Essex	303	58	1.54%
Fairfield Township	2	Essex	26,685	2,636	0.75%
Glen Ridge Borough	2	Essex	1,196	58	0.35%
Irvington Township	2	Essex	10,531	606	0.42%
Livingston Township	2	Essex	25,769	2,392	0.70%
Maplewood Township	2	Essex	4,670	-630	-0.90%
Millburn Township	2	Essex	16,140	1,112	0.51%
Montclair Township	2	Essex	14,235	1,045	0.55%
Newark	2	Essex	163,898	24,77	1.18%

City					
North Caldwell Borough	2	Essex	547	-57	-0.70%
Nutley Township	2	Essex	10,673	-1	0.00%
Roseland Borough	2	Essex	11,916	814	0.51%
South Orange Village Township	2	Essex	6,153	628	0.77%
Verona Township	2	Essex	5,257	928	1.40%
West Caldwell Township	2	Essex	9,611	1,104	0.88%
West Orange Township	2	Essex	23,745	5,557	1.92%
Clayton Borough	5	Gloucester	1,272	178	1.09%
Deptford Township	5	Gloucester	14,387	3,347	1.91%
East Greenwich Township	5	Gloucester	1,867	483	2.16%
Elk Township	5	Gloucester	819	319	3.58%
Franklin Township	5	Gloucester	2,817	497	1.39%
Glassboro Borough	5	Gloucester	7,112	1,505	1.71%
Greenwich	5	Gloucester	996	-157	-1.04%

Township					
Harrison Township	5	Gloucester	3,152	1,184	3.42%
Logan Township	5	Gloucester	5,293	1,413	2.24%
Mantua Township	5	Gloucester	14,451	6,217	4.10%
Monroe Township	5	Gloucester	9,185	2,715	2.53%
National Park Borough	5	Gloucester	362	85	1.93%
Newfield Borough	5	Gloucester	1,220	28	0.16%
Paulsboro Borough	5	Gloucester	4,052	792	1.57%
Pitman Borough	5	Gloucester	2,290	-152	-0.46%
South Harrison Township	5	Gloucester	624	209	2.95%
Swedesboro Borough	5	Gloucester	7,073	1,194	1.33%
Washington Township	5	Gloucester	13,010	2,106	1.27%
Wenonah Borough	5	Gloucester	856	107	0.96%
West Deptford Township	5	Gloucester	14,266	5,439	3.49%
Westville Borough	5	Gloucester	2,618	263	0.76%
Woodbury City	5	Gloucester	11,375	361	0.23%

Woodbury Heights Borough	5	Gloucester	2,476	447	1.43%
Woolwich Township	5	Gloucester	2,777	1,851	8.16%
Bayonne City	1	Hudson	16,393	1,376	0.63%
East Newark Borough	1	Hudson	705	-131	-1.21%
Guttenberg Town	1	Hudson	1,129	-213	-1.23%
Harrison Town	1	Hudson	3,791	-128	-0.24%
Hoboken City	1	Hudson	16,663	2,156	0.99%
Jersey City	1	Hudson	132,642	31,444	1.95%
Kearny Town	1	Hudson	19,728	1,086	0.41%
North Bergen Township	1	Hudson	23,326	2,144	0.69
Secaucus Town	1	Hudson	38,772	1,232	0.23%
Union City	1	Hudson	15,999	3,745	1.92%
Weehawken Township	1	Hudson	12,115	3,560	2.52%
West New York Town	1	Hudson	7,406	148	0.14%
Alexandria Township	3	Hunterdon	322	15	0.33%

Bethlehem Township	3	Hunterdon	323	-34	-0.72%
Bloomsbury Borough	3	Hunterdon	697	0	0.00%
Califon Borough	3	Hunterdon	924	0	0.00%
Clinton Town	3	Hunterdon	3,269	723	1.80%
Clinton Township	3	Hunterdon	6,275	1,421	1.85%
Delaware Township	3	Hunterdon	451	111	2.05%
East Amwell Township	3	Hunterdon	1,528	425	2.36%
Flemington Borough	3	Hunterdon	6,894	220	0.23%
Franklin Township	3	Hunterdon	2,074	907	4.19%
Frenchtown Borough	3	Hunterdon	866	87	0.76%
Glen Gardner Borough	3	Hunterdon	570	0	0.00%
Hampton Borough	3	Hunterdon	624	-10	-0.12%
High Bridge Borough	3	Hunterdon	695	108	1.22%
Holland Township	3	Hunterdon	192	-16	-0.57%
Kingwood Township	3	Hunterdon	443	75	1.34%
Lambertville	3	Hunterdon	2,774	791	2.43%

City					
Lebanon Borough	3	Hunterdon	2,755	618	1.83%
Lebanon Township	3	Hunterdon	1,066	0	0.00%
Milford Borough	3	Hunterdon	1,250	145	0.88%
Raritan Township	3	Hunterdon	11,553	2,555	1.80%
Readington Township	3	Hunterdon	8,938	2,116	1.95%
Stockton Borough	3	Hunterdon	529	91	1.36%
Tewksbury Township	3	Hunterdon	1,649	720	4.18%
Union Township	3	Hunterdon	1,148	-104	-0.62%
West Amwell Township	3	Hunterdon	327	57	1.37%
East Windsor Township	4	Mercer	9,009	1,866	1.67%
Ewing Township	4	Mercer	19,620	4,189	1.73%
Hamilton Township	4	Mercer	35,015	6,717	1.53%
Hightstown Borough	4	Mercer	4,684	733	1.22%
Hopewell Borough	4	Mercer	904	256	2.41%
Hopewell Township	4	Mercer	9,571	4,730	4.99%
Lawrence	4	Mercer	29,695	6,171	1.68%

Township					
Pennington Borough	4	Mercer	4,556	356	0.58%
Princeton Borough	4	Mercer	21,047	1,255	0.44%
Princeton Township	4	Mercer	13,469	2,884	1.74%
Trenton City	4	Mercer	40,007	8,168	1.64%
Washington Township	4	Mercer	8,189	2,946	3.24%
West Windsor Township	4	Mercer	28,289	7,225	2.13%
Carteret Borough	3	Middlesex	12,449	2,409	1.55%
Cranbury Township	3	Middlesex	15,785	1,884	0.91%
Dunellen Borough	3	Middlesex	1,334	31	0.17%
East Brunswick Township	3	Middlesex	23,459	787	0.24%
Edison Township	3	Middlesex	87,897	9,867	0.85%
Helmetta Borough	3	Middlesex	300	109	3.28%
Highland Park Borough	3	Middlesex	3,042	380	0.96%
Jamesburg Borough	3	Middlesex	4,779	485	0.77%
Metuchen Borough	3	Middlesex	6,516	602	0.69%

Middlesex Borough	3	Middlesex	7,120	347	0.36%
Milltown Borough	3	Middlesex	3,409	655	1.53%
Monroe Township	3	Middlesex	10,103	4,521	4.33%
New Brunswick City	3	Middlesex	39,781	4,969	0.96%
North Brunswick Township	3	Middlesex	21,004	3,719	1.40%
Old Bridge Township	3	Middlesex	15,864	3,501	1.80%
Perth Amboy City	3	Middlesex	13,424	855	0.47%
Piscataway Township	3	Middlesex	37,207	3,328	0.67%
Plainsboro Township	3	Middlesex	15,901	2,829	1.41%
Sayreville Borough	3	Middlesex	8,613	1,103	0.98%
South Amboy City	3	Middlesex	3,111	262	0.63%
South Brunswick Township	3	Middlesex	27,211	5,082	1.49%
South Plainfield Borough	3	Middlesex	19,775	372	0.14%
South River	3	Middlesex	4,235	896	1.71%

Borough					
Spotswood Borough	3	Middlesex	2,726	233	0.64%
Woodbridge Township	3	Middlesex	54,161	3,800	0.52%
Aberdeen Township	4	Monmouth	6,252	1,610	2.15%
Allenhurst Borough	4	Monmouth	546	0	0.00%
Allentown Borough	4	Monmouth	1,823	158	0.65%
Asbury Park City	4	Monmouth	4,564	832	1.45%
Atlantic Highlands Borough	4	Monmouth	2,741	379	1.07%
Avon-By-The-Sea Borough	4	Monmouth	434	-2	-0.04%
Belmar Borough	4	Monmouth	2,212	50	0.16%
Bradley Beach Borough	4	Monmouth	898	74	0.61%
Brielle Borough	4	Monmouth	1,459	179	0.94%
Colts Neck Township	4	Monmouth	3,518	840	1.97%
Deal Borough	4	Monmouth	633	22	0.25%
Eatontown Borough	4	Monmouth	18,850	5,705	2.61%

Englishtown Borough	4	Monmouth	3,246	405	0.96%
Fair Haven Borough	4	Monmouth	1,275	17	0.09%
Farmingdale Borough	4	Monmouth	3,741	59	0.11%
Freehold Borough	4	Monmouth	14,838	912	0.45%
Freehold Township	4	Monmouth	21,910	6,627	2.61%
Hazlet Township	4	Monmouth	8,124	1,572	1.55%
Highlands Borough	4	Monmouth	1,505	479	2.78%
Holmdel Township	4	Monmouth	12,017	1,252	0.79%
Howell Township	4	Monmouth	15,404	5,887	3.50%
Interlaken Borough	4	Monmouth	48	0	0.00%
Keansburg Borough	4	Monmouth	1,353	33	0.18%
Keyport Borough	4	Monmouth	3,223	646	1.61%
Lake Como Borough	4	Monmouth	354	0	0.00%
Little Silver Borough	4	Monmouth	2,372	70	0.21%
Loch Arbour Village	4	Monmouth	53	0	0.00%

Long Branch City	4	Monmouth	10,151	1,287	0.97%
Manalapan Township	4	Monmouth	12,422	3,441	2.34%
Manasquan Borough	4	Monmouth	5,764	49	0.06%
Marlboro Township	4	Monmouth	13,730	4,856	3.17%
Matawan Borough	4	Monmouth	4,819	619	0.99%
Middletown Township	4	Monmouth	20,436	3,396	1.31%
Millstone Township	4	Monmouth	2,553	1,052	3.87%
Monmouth Beach Borough	4	Monmouth	557	1	0.01%
Neptune City Borough	4	Monmouth	6,433	371	0.43%
Neptune Township	4	Monmouth	15,023	3,620	1.99%
Ocean Township	4	Monmouth	11,929	2,669	1.83%
Oceanport Borough	4	Monmouth	8,137	317	0.28%
Red Bank Borough	4	Monmouth	16,983	775	0.33%
Roosevelt Borough	4	Monmouth	158	56	3.18%
Rumson Borough	4	Monmouth	1,645	50	0.22%

Sea Bright Borough	4	Monmouth	821	0	0.00%
Sea Girt Borough	4	Monmouth	1,995	67	0.24%
Shrewsbury Borough	4	Monmouth	4,967	433	0.65%
Shrewsbury Township	4	Monmouth	1,313	8	0.04%
Spring Lake Borough	4	Monmouth	1,135	11	0.07%
Spring Lake Heights Borough	4	Monmouth	1,555	185	0.91%
Tinton Falls Borough	4	Monmouth	12,724	5,313	3.94%
Union Beach Borough	4	Monmouth	1,094	119	0.83%
Upper Freehold Township	4	Monmouth	2,893	1,261	4.17%
Wall Township	4	Monmouth	16,617	6,252	3.43%
West Long Branch Borough	4	Monmouth	6,081	531	0.65%
Boonton Town	2	Morris	4,249	1,054	2.06%
Boonton	2	Morris	1,789	291	1.27%

Township					
Butler Borough	2	Morris	3,907	937	1.98%
Chatham Borough	2	Morris	4,198	259	0.46%
Chatham Township	2	Morris	2,440	497	1.64%
Chester Borough	2	Morris	3,152	386	0.94%
Chester Township	2	Morris	1,550	229	1.15%
Denville Township	2	Morris	13,557	4,017	2.54%
Dover Town	2	Morris	5,362	-1,427	-1.67%
East Hanover Township	2	Morris	17,137	2,142	0.96%
Florham Park Borough	2	Morris	18,452	4,286	1.91%
Hanover Township	2	Morris	19,699	2,683	1.05%
Harding Township	2	Morris	1,395	429	2.66%
Jefferson Township	2	Morris	2,967	506	1.34%
Kinnelon Borough	2	Morris	1,915	15	0.06%
Lincoln Park Borough	2	Morris	4,804	1,195	2.06%
Long Hill	2	Morris	3,163	454	1.11%

Township					
Madison Borough	2	Morris	12,736	2,958	1.91%
Mendham Borough	2	Morris	2,070	403	1.56%
Mendham Township	2	Morris	1,070	238	1.81%
Mine Hill Township	2	Morris	866	337	3.58%
Montville Township	2	Morris	13,966	2,082	1.16%
Morris Plains Borough	2	Morris	11,962	1,608	1.04%
Morris Township	2	Morris	3,586	123	0.25%
Morristown Town	2	Morris	38,291	2,796	0.54%
Mount Arlington Borough	2	Morris	1,835	428	1.91%
Mount Olive Township	2	Morris	13,482	2,233	1.30%
Mountain Lakes Borough	2	Morris	3,389	530	1.22%
Netcong Borough	2	Morris	1,099	156	1.10%
Parsippany-Troy Hills Township	2	Morris	73,044	19,649	2.26%

Pequannock Township	2	Morris	7,048	836	0.91%
Randolph Township	2	Morris	10,580	2,420	1.87%
Riverdale Borough	2	Morris	3,807	1,064	2.37%
Rockaway Borough	2	Morris	8,144	1,614	1.59%
Rockaway Township	2	Morris	17,298	5,853	2.99%
Roxbury Township	2	Morris	12,594	3,586	2.42%
Victory Gardens Borough	2	Morris	173	55	2.78%
Washington Township	2	Morris	2,344	137	0.43%
Wharton Borough	2	Morris	4,670	1,352	2.47%
Barnegat Light Borough	4	Ocean	349	1	0.02%
Barnegat Township	4	Ocean	3,031	1,066	3.15%
Bay Head Borough	4	Ocean	428	-7	-0.11%
Beach Haven Borough	4	Ocean	1,731	0	0.00%
Beachwood Borough	4	Ocean	1,312	392	2.57%
Berkeley Township	4	Ocean	6,807	2,281	2.96%

Brick Township	4	Ocean	24,646	5,953	1.99%
Eagleswood Township	4	Ocean	789	314	3.68%
Harvey Cedars Borough	4	Ocean	225	0	0.00%
Island Heights Borough	4	Ocean	315	39	0.96%
Jackson Township	4	Ocean	13,354	2,734	1.65%
Lacey Township	4	Ocean	7,303	1,799	2.04%
Lakehurst Borough	4	Ocean	2,162	515	1.96%
Lakewood Township	4	Ocean	32,783	7,994	2.02%
Lavallette Borough	4	Ocean	788	-17	-0.15%
Little Egg Harbor Township	4	Ocean	4,251	1,853	4.17%
Long Beach Township	4	Ocean	1,315	2	0.01%
Manchester Township	4	Ocean	5,351	1,655	2.68%
Mantoloking Borough	4	Ocean	180	0	0.00%
Ocean Gate Borough	4	Ocean	110	3	0.17%

Ocean Township	4	Ocean	1,445	517	3.21%
Pine Beach Borough	4	Ocean	539	19	0.26%
Plumsted Township	4	Ocean	1,664	598	3.23%
Point Pleasant Beach Borough	4	Ocean	4,045	151	0.27%
Point Pleasant Borough	4	Ocean	4,263	-124	-0.20%
Seaside Heights Borough	4	Ocean	1,448	123	0.64%
Seaside Park Borough	4	Ocean	880	15	0.12%
Ship Bottom Borough	4	Ocean	1,131	0	0.00%
South Toms River Borough	4	Ocean	743	272	3.31%
Stafford Township	4	Ocean	12,791	4,122	2.82%
Surf City Borough	4	Ocean	652	0	0.00%
Toms River Township	4	Ocean	49,038	7,861	1.26%

Tuckerton Borough	4	Ocean	1,460	301	1.66%
Bloomingdale Borough	1	Passiac	2,973	1,502	5.16%
Clifton City	1	Passiac	33,020	2,061	0.46%
Haledon Borough	1	Passiac	2,691	996	3.36%
Hawthorne Borough	1	Passiac	8,009	2,063	2.15%
Little Falls Township	1	Passiac	7,060	1,331	1.50%
North Haledon Borough	1	Passiac	2,825	1,090	3.54%
Passaic City	1	Passiac	23,282	3,726	1.25%
Paterson City	1	Passiac	41,942	3,437	0.61%
Pompton Lakes Borough	1	Passiac	2,826	734	2.17%
Prospect Park Borough	1	Passiac	2,052	919	4.33%
Ringwood Borough	1	Passiac	2,284	0	0.00%
Totowa Borough	1	Passiac	16,800	4,254	2.11%
Wanaque Borough	1	Passiac	2,745	614	1.83%
Wayne Township	1	Passiac	45,835	8,277	1.43%

West Milford Township	1	Passiac	4,647	0	0.00%
West Paterson Borough	1	Passiac	8,344	2,808	2.97%
Alloway Township	6	Salem	791	173	1.77%
Carneys Point Township	6	Salem	2,484	422	1.34%
Elmer Borough	6	Salem	1,615	77	0.35%
Elsinboro Township	6	Salem	112	-19	-1.12%
Lower Alloways Creek Township	6	Salem	935	-26	-0.19%
Mannington Township	6	Salem	1,022	70	0.51%
Oldmans Township	6	Salem	734	53	0.53%
Penns Grove Borough	6	Salem	1,138	23	0.14%
Pennsville Township	6	Salem	4,289	113	0.19%
Pilesgrove Township	6	Salem	1,648	588	3.20%
Pittsgrove Township	6	Salem	4,428	1,510	3.02%
Quinton Township	6	Salem	163	16	0.72%

Salem City	6	Salem	3,414	302	0.66%
Upper Pittsgrove Township	6	Salem	1,361	331	2.01%
Woodstown Borough	6	Salem	1,786	118	0.49%
Bedminster Township	3	Somerset	9,340	1,967	1.70%
Bernards Township	3	Somerset	10,239	-563	-0.38%
Bernardsville Borough	3	Somerset	3,808	635	1.31%
Bound Brook Borough	3	Somerset	4,415	89	0.15%
Branchburg Township	3	Somerset	11,517	2,707	1.93%
Bridgewater Township	3	Somerset	42,573	8,428	1.59%
Far Hills Borough	3	Somerset	1,072	122	0.86%
Franklin Township	3	Somerset	36,889	3,925	0.81%
Green Brook Township	3	Somerset	4,622	664	1.11%
Hillsborough Township	3	Somerset	10,566	2,428	1.88%
Manville Borough	3	Somerset	2,751	400	1.13%
Millstone Borough	3	Somerset	145	27	1.49%

Montgomery Township	3	Somerset	12,504	2,712	1.76%
North Plainfield Borough	3	Somerset	4,055	131	0.23%
Peapack-Gladstone Borough	3	Somerset	1,322	-140	-0.72%
Raritan Borough	3	Somerset	12,099	2,231	1.47%
Rocky Hill Borough	3	Somerset	371	17	0.34%
Somerville Borough	3	Somerset	14,933	396	0.19%
South Bound Brook Borough	3	Somerset	549	34	0.46%
Warren Township	3	Somerset	10,774	643	0.44%
Watchung Borough	3	Somerset	8,140	1,613	1.59%
Andover Borough	1	Sussex	2,299	702	2.64%
Andover Township	1	Sussex	1,870	885	4.68%
Branchville Borough	1	Sussex	1,838	176	0.72%
Byram Township	1	Sussex	445	109	2.04%
Frankford Township	1	Sussex	1,214	434	3.21%
Franklin	1	Sussex	1,754	416	1.96%

Borough					
Fredon Township	1	Sussex	257	44	1.36%
Green Township	1	Sussex	399	166	3.92%
Hamburg Borough	1	Sussex	1,226	158	0.99%
Hampton Township	1	Sussex	1,161	451	3.57%
Hardyston Township	1	Sussex	2,311	1,184	5.26%
Hopatcong Borough	1	Sussex	1,737	526	2.61%
Lafayette Township	1	Sussex	3,385	1,441	4.04%
Montague Township	1	Sussex	816	237	2.48%
Newton Town	1	Sussex	12,346	3,655	2.54%
Ogdensburg Borough	1	Sussex	298	42	1.09%
Sandyston Township	1	Sussex	337	164	4.87%
Sparta Township	1	Sussex	9,472	2,235	1.94%
Stanhope Borough	1	Sussex	2,679	384	1.11%
Stillwater Township	1	Sussex	609	231	3.46%
Sussex Borough	1	Sussex	2,384	203	0.64%
Vernon Township	1	Sussex	3,871	710	1.46%
Walpack	1	Sussex	97	0	0.00%

Township					
Wantage Township	1	Sussex	1,304	429	2.89%
Berkeley Heights Township	2	Union	5,905	628	0.81%
Clark Township	2	Union	8,401	985	0.90%
Cranford Township	2	Union	15,601	1,518	0.73%
Elizabeth City	2	Union	59,602	13,157	1.80%
Fanwood Borough	2	Union	1,689	97	0.42%
Garwood Borough	2	Union	2,308	75	0.24%
Hillside Township	2	Union	7,792	1,068	1.06%
Kenilworth Borough	2	Union	11,823	1,252	0.80%
Linden City	2	Union	27,488	6,652	2.00%
Mountainside Borough	2	Union	5,809	452	0.58%
New Providence Borough	2	Union	9,652	742	0.57%
Plainfield City	2	Union	10,620	872	0.61%
Rahway City	2	Union	15,012	1,605	0.81%
Roselle Borough	2	Union	3,803	-84	-0.16%
Roselle	2	Union	2,502	178	0.53%

Park Borough					
Scotch Plains Township	2	Union	6,452	606	0.71%
Springfield Township	2	Union	11,419	754	0.49%
Summit City	2	Union	14,772	918	0.46%
Union Township	2	Union	43,462	7,700	1.40%
Westfield Town	2	Union	11,438	942	0.62%
Winfield Township	2	Union	160	46	2.47%
Allamuchy Township	2	Warren	381	34	0.66%
Alpha Borough	2	Warren	649	117	1.43%
Belvidere Town	2	Warren	2,422	280	0.88%
Blairstown Township	2	Warren	2,165	400	1.47%
Franklin Township	2	Warren	1,365	376	2.33%
Frelinghuysen Township	2	Warren	327	79	2.01%
Greenwich Township	2	Warren	932	243	2.18%
Hackettstown Town	2	Warren	10,786	1,416	1.01%
Hardwick Township	2	Warren	194	104	5.59%
Harmony	2	Warren	250	27	0.83%

Township					
Hope Township	2	Warren	325	18	0.41%
Independence Township	2	Warren	381	-6	-0.12%
Knowlton Township	2	Warren	1,005	216	1.74%
Liberty Township	2	Warren	582	25	0.32%
Lopatcong Township	2	Warren	1,335	175	1.01%
Mansfield Township	2	Warren	1,107	86	0.58%
Oxford Township	2	Warren	457	85	1.47%
Phillipsburg Town	2	Warren	11,289	1,955	1.37%
Pohatcong Township	2	Warren	3,403	1,455	4.07%
Washington Borough	2	Warren	2,649	332	0.96%
Washington Township	2	Warren	1,692	-195	-0.78%
White Township	2	Warren	883	111	0.97%
New Jersey			4,476,042	722,885	1.27%

Source: Econsult Corporation (2007)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING TASK 2 - ESTIMATING THE DEGREE TO WHICH FILTERING IS A SECONDARY SOURCE OF AFFORDABLE HOUSING

Final Report Submitted To:
New Jersey Council on Affordable Housing
101 South Broad Street
Trenton NJ 08625

Final Report Submitted By:
Econsult Corporation
3600 Market Street 6th Floor
Philadelphia PA 19104

FINAL REPORT - November 16, 2007

TABLE OF CONTENTS

EXECUTIVE SUMMARY

This presents a new approach to measuring the extent to which filtering has affected the supply of affordable housing for low-to-moderate (low-mod) households in New Jersey from 1993 through 2005 based on property-level data on home transactions in New Jersey from 1989 through 2005. It also provides a projection of filtering for the 2006 to 2018 period. Because new data and mapping techniques are now available, the approach differs significantly from the previous estimation of filtering.

1.0 PRIOR METHOD

From the 1989 and 1999 American Housing Survey, all sampled households that were identified as being in Metropolitan Statistical Areas <1> that were located (at least partially) in New Jersey were identified. The researchers compared reported household incomes in the two years, and classified households into two categories: "low-moderate income" and "middle-upper income". A unit that was occupied by a "low-mod" household in 1989, but became occupied by a "middle-upper" household in 1999 was classified as having "filtered up". Conversely, a unit that was occupied by a "middle-upper" household in 1989 but became occupied by a "low-mod" household in 1999 was classified as having "filtered down".

They then computed the percent of the AHS sample that both filtered up and filtered down. Because the research is only concerned with how filtering is a secondary source of affordable housing for low-mod households, they dropped filtered units that remained beyond the reach of affordability to these households. This effectively eliminates units from the sample that only filtered between relatively high-income households. These two modified filtering numbers were netted against each other to obtain the net filtering rate for the 1989-1999 period. They then applied this percent to the housing stock of NJ to determine the total number of units that filtered. Lastly, this number was multiplied times 1.5 to adjust the ten-year filtering number to the fifteen-year period of 1999-2014.

While the initial effort was state-of-the-art at the time that it was developed, there are limitations to the data and methods.

1) The American Housing Survey data has very limited spatial information.

The American Housing Survey does not provide information on location of housing units by municipality. Thus filtering must be calculated on a metropolitan or statewide basis and allocated to municipalities. With the availability of housing sales data and GIS software, it is now possible to directly evaluate municipality filtering.

2) The American Housing Survey likely contains units not located in New Jersey.

For South Jersey, the researchers used data from the Philadelphia MSA because it contains the NJ counties of Burlington, Camden, Gloucester and Salem. However, it also contains the (heavily-populated) PA counties of Bucks, Montgomery, Chester and Delaware. The presence of observations from these non-NJ counties can skew the results.

3) The definition of a filtering event could be overly sensitive to small changes in income.

The researchers identified filtered units as those for which the reported income changed the household's eligibility status under Mt Laurel II income requirements. However, this method does not take into account the magnitude of the income change. In particular, households which were just above (below) the qualifying threshold in one period and were subsequently just below (above) the threshold in the next period would qualify as being a filtered unit. However, filtered units are typically associated with entire neighborhoods either gentrifying upwards or falling into distress, as existing households are replaced by entirely different ones. Hence, the method may over-identify the number of filtered units.

4) Data from the last five years suggest that the 1989-1999 period examined captured only part of the housing market cycle.

After measuring the rate of filtering from 1989-1999, the researchers multiplied this number times 1.5 to generate a 5-year-ahead forecast. However, the years 1989-1999 were generally a down period for New Jersey's (and the Nation's) housing market, when volume was low and prices were declining-to-flat. Following 2000, the market experienced an unprecedented boom, with both volume and price appreciation experiencing double-digit growth.

This has especially critical implications for the research because the dynamics of filtering co-vary across the housing cycle. Down-markets are associated with disproportionate amounts of downward filtering, while up-markets are conversely associated with different amounts of upward filtering. If the analysis focuses only on the down-market periods then downward filtering is likely to be overstated in the future; similarly, if the analysis were to focus only on the boom part of the cycle, downward filtering would be understated. The current analysis has the benefit of covering the entire housing cycle.

2.0 PREVIOUS RESEARCH

The theory of downward filtering as a source of low-cost housing is nested within a larger body of research that views housing as a durable good: it is relatively challenging to supply, possesses a long life once constructed, and consequently, it is rarely in a steady equilibrium where supply equals demand and prices are stable. Because of these aforementioned factors, the housing market is prone to cyclical behavior, with the lifecycle of buildings being correlated with the overall evolution of real estate cycles: as prices rise relative to construction costs, developers will build new housing, and existing units will subsequently filter down and become more affordable for low-income households to occupy. Conversely, in markets that are more supply constrained, owners and landlords have an incentive to invest in and upgrade existing units for occupancy by higher-income households; a process characterized as "upward filtering". The existence of the general filtering process is well documented in existing research: Sweeney 1974; Rothenberg et al. 1991; O'Flaherty 1995, 1996.

However, a more recent body of research has yielded additional insights into how the dynamics of filtering are affected by the fundamental conditions of the local housing market. This research has linked filtering outcomes to the underlying market and policy inputs that govern the operation of housing markets. By characterizing not only to what extent filtering can (or cannot) take place, this literature also describes under what conditions the filtering process is more likely to be upwards v. downwards. As such, this research provides useful insight into what variables can most likely explain the future level and direction of filtering in New Jersey. <2>

Nelson, et al., (1998) measures the extent of filtering with data from the American Housing Survey in 41 metropolitan areas. The authors use paired observations to track individual housing units twice at four-year intervals from 1985 to 1992. Changes in the local housing stock are measured through additions from new construction, subtractions from demolition, changes in the tenure of households, and changes in rent levels as existing units change occupancy between different households. This last category provides the extent of filtering.

By measuring the degree of filtering in the presence of other housing activity, the authors provide insights into how filtering is affected by the amounts of new construction, demolition and household mobility in a local market. Based upon how filtering is affected by these aforementioned factors, the authors group the 41 metropolitan markets into six categories:

·Booming/Gaining (high rate of construction and gain in affordable units);

·Booming/Some Loss (high rate of construction and some loss of affordable units);

·Booming/High Loss (high rate of construction and substantial loss of affordable units);

·Low Growth/Gaining (low rate of construction and gain in affordable units);

·Low Growth/Some Loss (low rate of construction and some loss of affordable units); and

·Low Growth/High Loss (low rate of construction and substantial loss of affordable units).

The central findings of Nelson, et al. regarding filtering are threefold:

1) Markets which experienced significant growth in the stock of affordable housing <3> via the process of downward filtering are characterized by a relatively elastic supply of housing, a declining population, or both.

2) Markets in which the number of affordable units declined and/or upward filtering occurred are characterized by a relatively inelastic supply of housing. <4>

3) Regardless of which category a market is in, very low-rent housing units are more likely to filter up than down.

The authors then use these results to draw some implications for housing policy. For example, in supply-elastic markets, demand-side housing vouchers would seem to be a relatively better policy to induce growth in the stock of affordable housing, whereas supply-side production subsidies would be a more effective choice in supply-inelastic markets.

Sinai and Waldfogel (2002) examine whether the subsidized production of housing crowds out private production (or maintenance) of housing, which has implications for filtering. Using 1990 Census data, the authors find that there is at least partial crowding out of private housing by public (or publicly-subsidized) housing. On the face of it, this would seem to indicate that regions with significant amounts of public or publicly-subsidized housing would have less downward filtering, as low-income households would live in these units rather than in filtered units. However, the authors only examine how this crowding out affects the total housing stock, and not the affordable housing stock. <5>

This has two implications. First, if the crowding out that occurs does not displace affordable units directly, its impact on downward filtering is likely to be minimal. Secondly, if the housing units that are displaced are not affordable, and these displaced units would not have filtered anyway, then the effect on downward filtering is also likely to be minimal.

Somerville and Mayer (2003) make the connection between filtering and supply elasticity more explicit by tying it to regulation. Like Nelson et al (1998), the authors used AHS data on matched pairs of individual units at two points in time to track the movement of units into and out of the affordable housing stock. The authors define a number of variables that characterize the degree of local land-use regulation, and then use these variables to examine how restrictions on new construction affect the probability that a unit will filter.

The authors find that restrictive regulations on the supply of new units in any segment of the market will lower the total supply of affordable units. <6> This occurs because the restriction in new supply raises the return to landlords from investing in (i.e. upgrading and improving) the quality of their existing units. These improvements are subsequently capitalized into a higher price, which decreases affordability and promotes upward filtering.

The central result of Somerville and Mayer's (2003) paper is that decreased supply elasticity--whether natural or synthetic--promotes upward filtering of the housing stock. But among other results, the authors also find that upward (downward) filtering is negatively (positively) associated with the age of the rental housing stock, negatively (positively) associated with how affordable a unit is, and positively (negatively) associated with the level of local incomes and rents. These results are consistent with Nelson et al. (1998), and both papers share the same general prediction that markets with a low supply elasticity of housing will see increasing spatial concentration of affordable housing into fewer neighborhoods, and decreasing income and rent diversity in relatively well-off neighborhoods. The natural policy implication is that any benefits of regulation must be contrasted with the decreased affordability and access to homeownership they are likely to cost.

Other studies examining the effects of housing policy on filtering corroborate the results of these previous studies. Mullin and Gillen (2006) examine the effect of HUD's HOPE VI program on the values of privately owned homes in affected neighborhoods. Employing an event-study methodology to examine trends in house values near public housing projects in Philadelphia in the 1990s and 2000s, the authors examined what effect the demolition of the housing projects and the subsequent redevelopment of the sites to scattered-site single-family housing have on the values of nearby homes. They find that home values near public housing projects were depressed relative to comparable homes throughout the city, but these same homes experienced above-market appreciation following the demolition and redevelopment of these sites.

By contrast, Gillen (2007) examines what happens to property values in those neighborhoods to which the former public housing residents relocate. Merging home sales data with lease-level data on Section 8 vouchers in Philadelphia during the same period, the author examines the level and trend in both house prices and housing turnover in neighborhoods that attract Section 8 households. He finds that price declines and housing turnover in those neighborhoods exceed the baseline citywide averages during the 1990-2000 period. In summary, then, the elimination of traditional public housing projects is associated with upward filtering of the local housing stock, while the introduction of additional voucher households is associated with downward filtering of the local housing stock.

In contrast to these studies, Rosenthal (2006) takes a much longer view of the filtering process. The author uses Census Tract data from 1950 to 1990 for 29 MSAs along with data from 1900 to 1990 for Philadelphia. Like the previous studies, the author finds significant mobility of housing units as part of the cycle of decline and renewal that characterizes U.S. urban neighborhoods. Moreover, this mobility provides additional empirical confirmation of both types of filtering, because it finds that housing units change hands from higher income households to lower-income households and vice versa. A more specific result is that neighborhood income exhibits greater volatility than MSA median income, changing about 12 percent per decade relative to MSA median income.

The literature finds that both the extent and type of filtering is affected by a number of factors, both demographic/socioeconomic as well as the prevalence and degree of the type of housing policies that prevail. Moreover, some factors are highly local (affecting neighborhoods) while others are more global (affecting regional markets), and may even be working in opposite directions. In summary, the literature finds that:

Downward filtering is associated with:

Low construction costs, high maintenance/improvement costs, elastic supply of new units, low regulation, low public subsidies/provision of new housing, low population growth and/or low household formation (esp. among high-income households), declining rents, age of the housing stock, relative affordability of housing, low neighborhood income and rents, lack of publicly-provided or subsidized housing, local presence of Section 8 households.

Upward filtering is associated with:

High construction costs, low maintenance/improvement costs, inelastic supply of new units, high regulation, high population growth and/or high household formation (esp. among high-income households), rising rents, youth of the housing stock, relative unaffordability of housing, high neighborhood income and rents, lack of publicly-provided or subsidized housing, global presence of Section 8 households, housing is in the lowest rent category and local elimination of public housing.

These findings from the literature are able to serve as useful factors in estimating our own model of filtering in NJ; a subject to which we now turn.

3.0 ECONSULT'S METHOD

Our method identifies a filtered housing unit as one that has experienced both a significant price change and significant income change in the occupying household. Using comprehensive property-level data on all paired (and cleaned) home transactions in NJ from 1989-2006, the appreciation rate of each unit is compared to the market appreciation rate of the COAH Region in which the unit is located. If the unit's appreciation rate exceeds the Region's appreciation rate by a significant margin (i.e. 1 std. dev.), it is classified as having "Appreciated". If the unit's appreciation rate lags the Region's appreciation rate by a significant margin (i.e. 1 std. dev.), it is classified as having "Depreciated". We then perform a similar classification for changes in household income. If the tract's change in median income exceeds the statewide increase in median income by a significant percentage margin (i.e. 1 std. dev.), the unit is classified as having "Increased" in income, and vice-versa if the tract's percentage change in income significantly lags the statewide change. If a unit has both "Appreciated" in value and "Increased" in income, it is classified as having "Filtered Up". If a unit has "Depreciated" in value and "Decreased" in income, it is classified as having "Filtered Down".

Because we only care about how low-mod income households are affected by filtering, we then delete those units that filtered only between high-income households in high-priced areas, using COAH's income guidelines. The remaining number of units that have filtered are then summed, converted to percents, and then applied to the housing stock of NJ to obtain the total filtering number.

Note that this method attempts to directly address the limitations identified in the previous method. First, the scope of the data is limited to NJ. Secondly, the data provides comprehensive and detailed geographic coverage of the NJ market. Thirdly, the definition of filtering is a more stringent one because it requires a **significant** change in **both** a unit's value **and** the unit's household income. Lastly, because the data covers the entire 1989-2005 period, it captures a full revolution of the housing cycle, and hence yields a more fully identified model of filtering dynamics. The only shortcoming of this approach relative to the previous method is that household income is observed only at the tract

level, and not at the individual household level. However, considering that inter-tract variation in income is far greater than its counterpart of intra-tract variation, we believe that this is only a very minor shortcoming, and one that is more than offset by all of the aforementioned advantages.

Here are the results. The different methodological approaches are compared in the two columns (see Figure 3.1):

Figure 3.1 - Filtering Results, 1989-2005

		Rutgers Method	Econsult Method
(1)	Sample Size	1,964,046	457,910
(2)	# Units Filtered Up	296,716	21,993
(3)	% Units Filtered Up	15.11%	4.8%
(4)	# Units Filtered Down	334,282	8,773
(5)	% Units Filtered Down	17.02%	1.92%
(6)	Net # Units Filtered Down	37,566	-13,220
(7)	Net % Units Filtered Down	1.91%	-2.89%
(8)	# Filtered Units in Upper End of the Market	96,941	23,911
(9)	# Units Filtered Up	N/A	1,772
(10)	% Units Filtered Up	N/A	0.41%
(11)	# Units Filtered Down	39,438	5,083
(12)	% Units Filtered Down	2.20%	1.18%
(13)	Net # Units Filtered Down	N/A	3,311

(14)	Net % Units Filtered Down	N/A	0.78%
(15)	Housing Stock of NJ in 2005	3,443,981	3,443,981
(16)	**Total Net Units that Downward Filtered Statewide 1989-2005**	**+59,156**	**+26,744**

Source: Econsult Corporation (2007)

After cleaning and geo-coding the data, our working sample of paired transactions numbers 457,910, as indicated in line (1). Applying the filtering criterion yields 21,993 units that filtered up (2) and 8,773 units that filtered down (4). Dividing (2) and (4) into (1) yields gross, statewide filtering rates of 4.8 percent (3) for upward filtering and 1.92 percent for downward filtering.

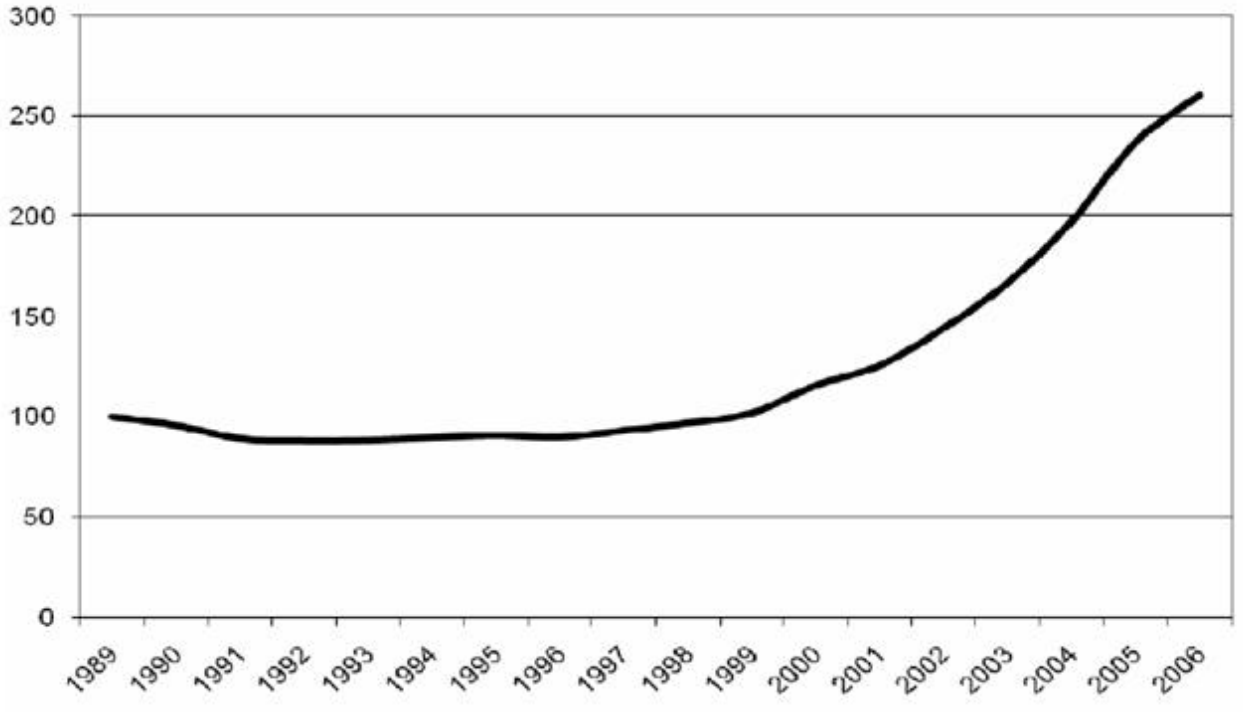
The next critical step is to drop those units that filtered, but still remain out of the reach of low-moderate income households. Applying the qualifying income criterion supplied by COAH, <7> this results in the deletion of 23,911 paired transactions from the sample. These are mostly units that began as relatively high-priced dwellings in relatively high-income neighborhoods, and finished as even higher-priced dwellings in even higher-income neighborhoods. The majority of these units were identified as having filtered upward. They were deleted from the sample because they never met the guidelines of affordability to begin with: although they meet our definition of "filtered", they filtered only between relatively high-income households and/or in high-priced localities.

Having dropped these units from the sample, the filtering numbers are re-computed in steps (9)-(14). Item (10) reports that .41 percent of the sample filtered up out of the range of low-mod households, while item (12) reports that 1.18 percent of the sample filtered down. Note that the deletion of the upper-end of the housing stock results in a rate of downward filtering that now exceeds the rate of upward filtering. Consequently, the net rate of downward filtering is now 0.78 percent. **Multiplying this number by the total housing stock of NJ in 2005 implies there was a net gain of 26,744 affordable housing units as a result of net downward filtering during this period. <8>**

4.0 MARKET APPRECIATION

This number is roughly half of what is reported by Rutgers because our period included the up-years of 2000-2006, when upward filtering dominated the sample. Although this time period is half of the previous period, the magnitude of the price appreciation that occurred far exceeded that of the price depreciation of the early 1990s. To characterize the magnitude of the market's appreciation, we estimated WRS house price indices using our population of paired transactions. The results are plotted in Figure 4.1:

Figure 4.1 - New Jersey House Price Index, 1989-2006



Click here for image

Source: Econsult Corporation (2007)

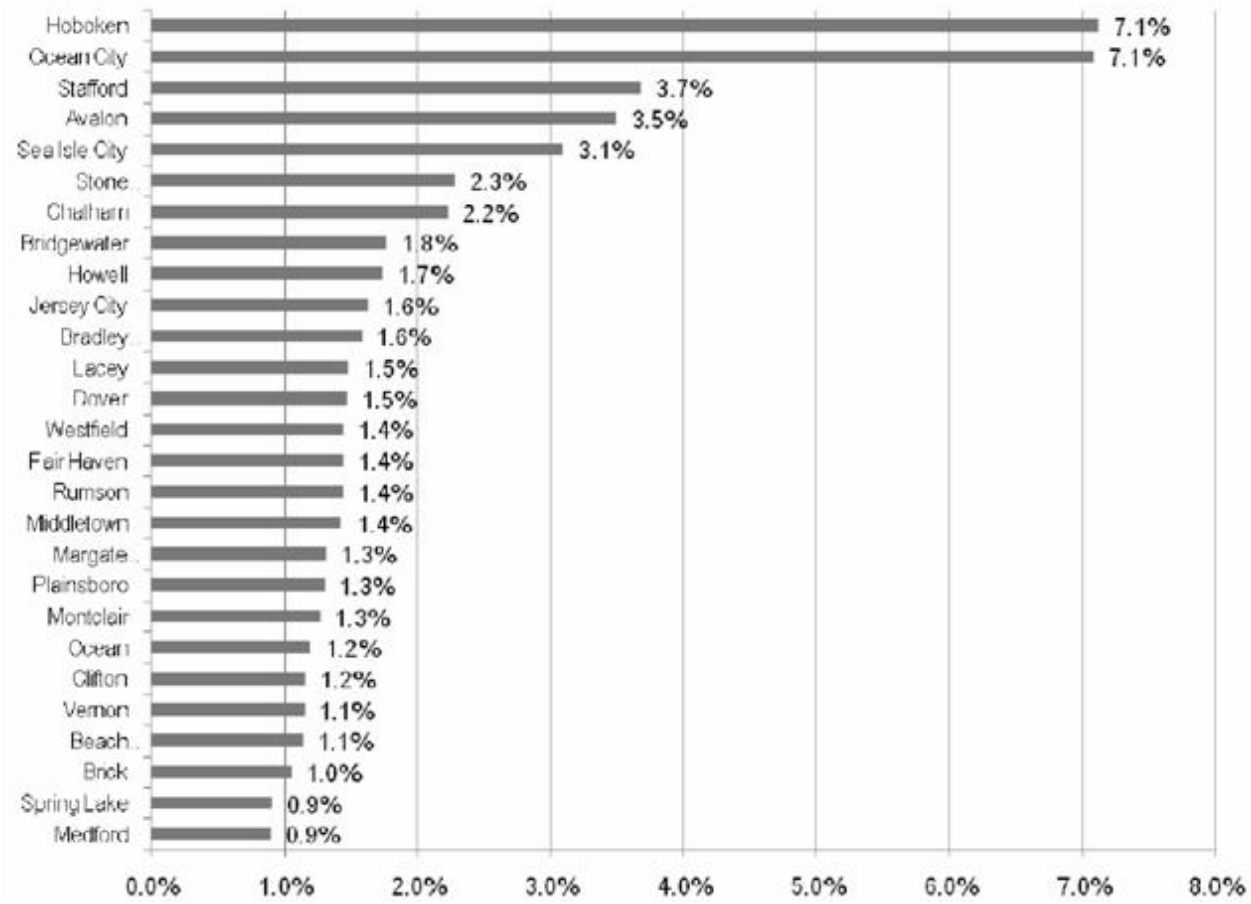
From a baseline value of 100 in 1989, the index fell by more than 10 percent until bottoming out in 1996. By 1999, the index had recovered against these losses. However, after 2001, the index appreciated by 156 percent over the next five years. This implies that the average New Jersey dwelling appreciated by the same amount during this same period. Therefore, Econsult has covered a full revolution of the housing cycle.

5.0 DELETION OF UNAFFORDABLE UNITS

Despite the magnitude of this price appreciation, its effect on statewide filtering is not uniform. The deletion of unaffordable units supports this point. Prior to their deletion, net filtering is in the upward direction. Following to their deletion, this result is reversed, and net filtering is downward. This implies an interesting result: **while overall statewide filtering may have been upward, it was overwhelmingly concentrated in the upper end of the housing market during this period**. That is, most filtering that occurred was housing units in high-priced markets becoming ever higher-priced, and occupied by ever higher-income households.

To examine if this is true or not, we generated a frequency count of these high-priced units by city, and ranked them according to the number of transactions that occurred. The cities that contain these deleted transactions are shown in Figure 5.1:

Figure 5.1 - Deleted Unaffordable Transactions, by City



Click here for image

Source: Econsult Corporation (2007)

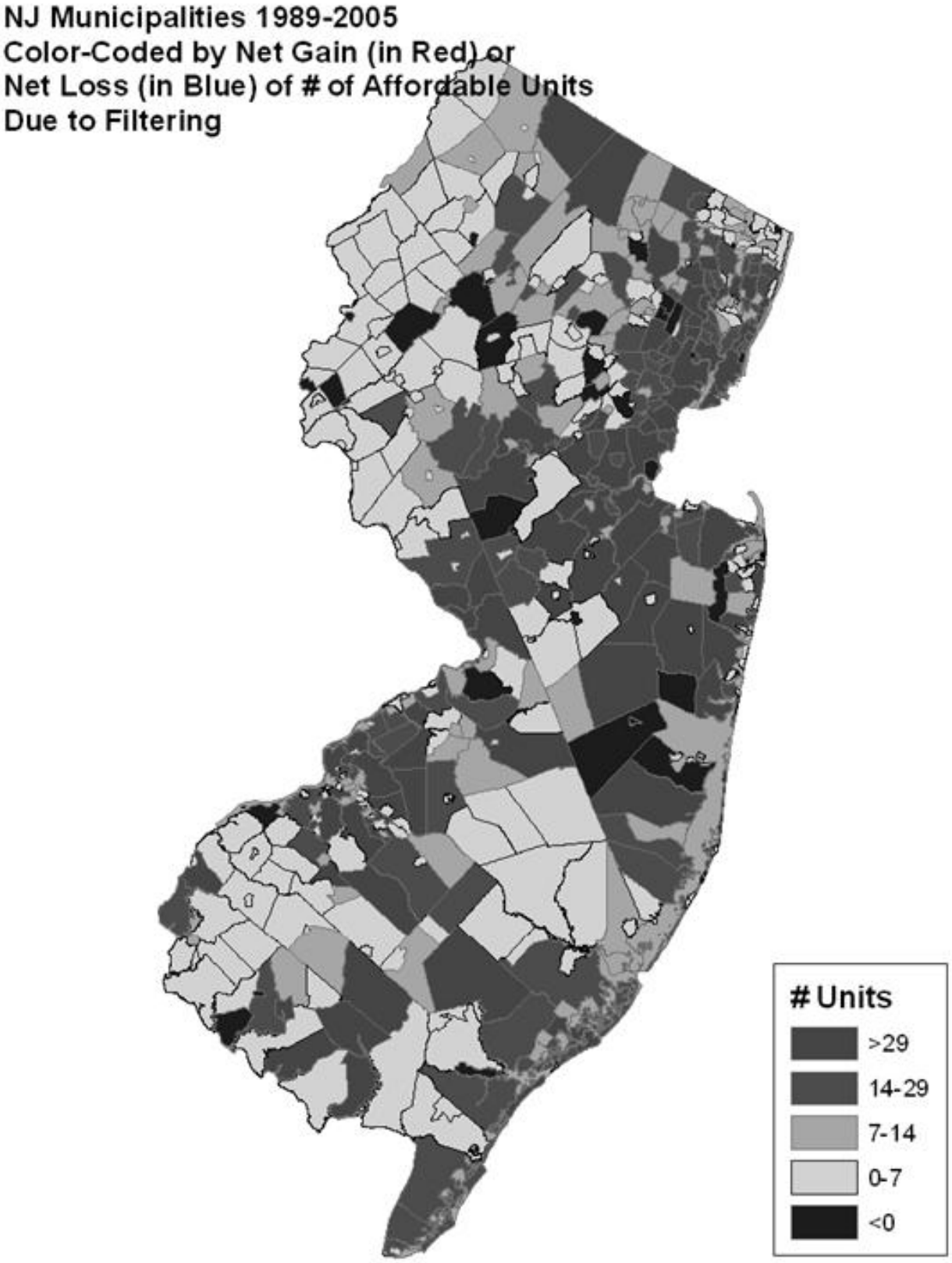
The chart seems to bear this result out. Just two markets (Hoboken, Ocean City) account for nearly 15 percent of all deleted transactions. In general, the deleted observations fall into three types of markets: older-yet-gentrifying urban cores (Hoboken, Jersey City), affluent Jersey suburbs (Montclair, Chatham, Westfield, Medford, Middletown) and resort Shore markets (Ocean City, Avalon, Stone Harbor). The initial unaffordability of these markets, combined with their above-market rates of appreciation, disqualified them from any analysis of filtering as a supply of affordable housing. **Consequently, the deletion of these high-priced units from the analysis leads to the result that net filtering in the affordable segment of the market saw an expansion of that housing supply--however modest--despite the remarkable overall appreciation rates during those years.**

6.0 GEOGRAPHIC VARIATION IN NET FILTERING

To provide further support to this result, we examine the geographic variation in net filtering, both pre- and post-omission of these units from the sample. First, we note that their deletion is appropriate in that this study is only interested the dynamics of filtering, *as it pertains to the supply of affordable housing*. These deleted units weren't in the realm of affordability to begin with, and only became less so during the course of the 1989-2005 period (esp. post-2000). Computing the filtering rate ex post their deletion is the net filtering rate *for affordable housing only*. These observations have been deleted from both the numerator (filtered units) and the denominator (all units that transacted).

We begin by looking at each municipality's net filtering rate, using the full population of all transactions. This is computed as the net number of units that filtered downward: total downward filtering units minus total upward filtering units. This ratio is computed for each municipality, based upon the address of each transacted property. A positive ratio implies a net gain to affordable housing from downward filtering, while a negative ratio implies a net loss to affordable housing from upward filtering. Municipalities, which experienced a net gain, are colored red, while municipalities that experienced a net loss are colored blue (see Figure 6.1).

Figure 6.1 - Net Gains/Losses from Filtering by Municipality, All Units


NJ Municipalities 1989-2005
Color-Coded by Net Gain (in Red) or
Net Loss (in Blue) of # of Affordable Units
Due to Filtering
Units
>29
14-29
7-14
0-7
<0

Click here for image

Source: Econsult Corporation (2007)

As the map indicates, most municipalities experienced a new upward gain in affordable housing units due to downward filtering during the 1989-2005 period. Part of this is because the downward cycle in house prices during 1989-1995 moved a lot of units into the realm of affordability. Another reason is that the boom of 1998-2005 saw a lot of new construction that let existing, older units filter down. But another reason is simply mathematical: because the net filtering numbers omits those units that are unaffordable, even very high-priced jurisdictions see a net gain in downward filtering. For example, the Jersey Shore communities experienced net upward filtering during the 2000-2005 boom period, which saw shore property values increase by double-digit percents annually. However, because this housing stock was unaffordable to low-moderate income households to begin with, the majority of these units are omitted from this analysis. Hence, even high-priced communities can experience some net gains from downward filtering when the high-priced segment of their housing stock is deleted from the sample.

Areas that experienced the largest net losses of affordable housing include Hoboken (-921 units), Manchester Township (-790), Perth Amboy (-669) and Montclair Township (-404). At the other end of the spectrum, the areas which experienced the largest gains in affordable housing units due to net downward filtering are generally the older, urban population centers of the state, including: Jersey City (+2,597 units), Camden (+2,249), Paterson (+2,042), Union (+1,881), Newark (+1,487), Asbury Park (+978) and Trenton (+526).

Hence, these maps provide further empirical support to the result that, for low-to-moderate income markets, filtering was a net positive source of affordable housing from 1989-2005.

7.0 FINAL COMPARISON

As a final check for our method, we now replicate our results for just the 1989-1999 period, and compare it to Rutgers'. This eliminates the effects of the post-2000 boom, and also facilitates an apples-to-apples comparison of methods (see Figure 7.1):

Figure 7.1 - Filtering Results, 1989-1999

	Rutgers	Method 2
Sample Size	1,964,046	121,177
# Filtered Units in Upper End of the Market	96,941	8,148
# Units Filtered Up	N/A	380
% Units Filtered Up	N/A	0.34%
# Units Filtered Down	39,438	849

% Units Filtered Down	2.20%	0.75%
Net # Units Filtered Down		469
Net % Units Filtered Down		0.42%
Applicable Housing Stock <9>	1,792,465	3,310,275
Total Net Units that Downward Filtered Statewide 1989-1999	**+39,438**	**+13,979**

Source: Econsult Corporation (2007)

Both methods agree that there was net downward filtering and subsequent expansion of the stock of affordable housing. This is consistent with the fact that the years 1989-1999 were a down-to-flat market. However, our approach obtains a significantly smaller number. This is likely for two reasons. First, Rutgers included out-of-state housing units in its sample. Second, our eligibility to be considered a filtered unit is more rigorous, as it requires both significant income and price change events.

As a final check, we compare our numbers for the 1993-1999 Second Round Need Period. Rutgers estimated a gain of 20,184 units, whereas Econsult estimates 7,710. This fractional difference of 38 percent is very close to the 35 percent fractional difference reported in Table 2 for the 1989-1999 period, so the consistency of Econsult's method seems stable. <10>

8.0 MODELING AND FORECASTING FILTERING

The next step in our analysis is to forecast filtering for the 2006-2018 period. We do this by first developing a model of filtering, and then apply this model to current data in order to generate forward forecasts. The model specification is a multinomial logit regression, where the dependent variable is the probability that a housing unit filters up, filters down, or does neither. It is similar to that of Somerville and Mayer (2003), but draws more extensively from the results of filtering literature reviewed earlier in this document. Each paired transaction is assigned a filtering status based upon its relative change in price and relative change in its Tract income between transactions. The baseline outcome of the model is the probability of not filtering, so the estimated coefficients measure the probability of either filtering up or down, given a unit change in the independent variables.

The model is specified as follows. For each housing unit, the unit will undergo one of three possible outcomes (oi, i=1,2,3) from the set of all outcomes O, conditional upon a set of factors F:

$$\Pr ob(o_i \mid F) = \frac{e^{x_i \beta}}{\sum_{j=1}^{3} e^{x_j \beta}} \quad (1)$$

Click here for image

The independent variables used in the estimation were chosen based upon the findings of the filtering literature. They are listed and defined in Figure 8.1:

Figure 8.1 - Independent Variables for Multinomial Logit Model of Filtering

Variable	Definition	Source
Pct_Blt	Municipality Percent "Built Out"	Econsult Task 1 work
HDensity	Density of Municipality's Housing Stock	US Census
City_Size	City Size, Based upon Size of Housing Stock	US Census
Cycle	Stage of the Housing Cycle: Up, Down, or Flat	NJ House Price Index
Growth	% Change in City's Housing Stock 1990-2002	US Census
HIncome	Avg. Household Income	US Census
Region	COAH Region fixed effect	NJ COAH

Source: Econsult Corporation (2007)

For home sales occurring in the inter-decennial years, linear interpolations of the variables will be used. Since most of the Census variables are demographic or socioeconomic (e.g. population, income), and that such variables are very persistent and have low inter-temporal volatility at short horizons, we believe that simple interpolations are appropriate. Also, because multinomial logit models are very computationally complicated to estimate with large datasets, the model was estimated by collapsing the property-level data down into synthetic pools, based upon categorical classifications of the independent variables enumerated in Figure 8.1. The number of transactions in each pool is then used as a weight in the estimation of the model.

The model is estimated using data for the years 1990-2005. Interaction terms of the variables in Figure 8.1 were also added to the specification. Since multinomial logit regression results can be awkward to directly interpret, the coefficients are then exponentiated relative to the baseline outcome to compute the relative probabilities of filtering up or down, given changes in the independent variables. As an integrity check, we first perform a series of two-way regressions, regressing the percent of units that filtered in each municipality on each of the individual variables in Figure 8.1. The results are presented in Figure 8.2.

Figure 8.2 - Multinomial Logit Regression Results

Parameter	Value 1	Value 2	Filter Status	Estimate	Pr > ChiSq
Intercept			Up	-2.941	<.0001
Intercept			Down	-4.352	<.0001
pct_blt	Built Out		Up	0.342	<.0001
pct_blt	Built Out		Down	-0.1442	<.0001
pct_blt	Underbuilt		Up	-0.1526	<.0001
pct_blt	Underbuilt		Down	0.6357	<.0001
hdensity	High		Up	0.4081	<.0001
hdensity	High		Down	0.9064	<.0001
hdensity	Low		Up	-0.1132	<.0001
hdensity	Low		Down	-0.9313	<.0001
city_size	Large		Up	-0.152	<.0001

city_size	Large		Down	0.3511	<.0001
city_size	Medium		Up	0.3592	<.0001
city_size	Medium		Down	-0.3583	<.0001
cycle	Up		Up	-0.2843	<.0001
cycle	Up		Down	-0.0693	0.0005
cycle	Down		Up	0.2908	<.0001
cycle	Down		Down	0.1451	<.0001
growth	Low		Up	-0.4505	<.0001
growth	Low		Down	0.2143	<.0001
growth	High		Up	-0.2223	<.0001
growth	High		Down	-0.3961	<.0001
hincome	High		Up	1.029	<.0001
hincome	High		Down	-0.399	<.0001
hincome	Low		Up	-0.9025	<.0001
hincome	Low		Down	0.9739	<.0001
pct_blt*hincome	Built Out	High	Up	0.5388	<.0001
pct_blt*hincome	Built Out	High	Down	0.648	<.0001
pct_blt*hincome	Built Out	Low	Up	-0.5295	<.0001
pct_blt*hincome	Built Out	Low	Down	-0.487	<.0001

pct_blt*hincome	Underbuilt	High	Up	-0.6479	<.0001
pct_blt*hincome	Underbuilt	High	Down	0.1112	0.0119
pct_blt*hincome	Underbuilt	Low	Up	0.5052	<.0001
pct_blt*hincome	Underbuilt	Low	Down	-0.0376	0.2335
cycle*growth	Up	Low	Up	0.0404	0.0237
cycle*growth	Up	Low	Down	0.2298	<.0001
cycle*growth	Up	High	Up	0.1118	<.0001
cycle*growth	Up	High	Down	-0.18	<.0001
cycle*growth	Down	Low	Up	-0.0451	0.0837
cycle*growth	Down	Low	Down	-0.4049	<.0001
cycle*growth	Down	High	Up	-0.0991	<.0001
cycle*growth	Down	High	Down	0.377	<.0001
city_size*growth	Large	Low	Up	0.7003	<.0001
city_size*growth	Large	Low	Down	-0.2663	<.0001
city_size*growth	Large	High	Up	-0.7669	<.0001
city_size*growth	Large	High	Down	0.6585	<.0001
city_size*growth	Medium	Low	Up	-0.7117	<.0001
city_size*growth	Medium	Low	Down	0.8603	<.0001
city_size*growth	Medium	High	Up	0.1707	<.0001

city_size*growth	Medium	High	Down	-1.1465	<.0001
region	1		Up	-0.7896	<.0001
region	1		Down	0.2694	<.0001
region	2		Up	-0.3416	<.0001
region	2		Down	-0.3274	<.0001
region	3		Up	-0.2997	<.0001
region	3		Down	-0.7289	<.0001
region	4		Up	0.8343	<.0001
region	4		Down	-0.0793	0.0076
region	5		Up	-0.0398	0.1144
region	5		Down	0.0979	0.0007

Source: Econsult Corporation (2007)

The regression output is large because there is a separate coefficient estimated for each categorical permutation of the variables. Moreover, the interpretation of the coefficients is especially complicated because they measure the log odds of the marginal probability of filtering, relative to the omitted category. However, one interpretation is fairly straightforward and intuitive: a large value of a coefficient is typically interpreted as a greater effect that variable has on the probability of filtering. And, very small p-values (say, less than 0.10) indicate that variable is a (statistically) significant factor in predicting that a housing unit will filter.

To illustrate, consider the first variable in the model, pct_blt. Based upon the univariate distribution of this variable across municipalities, each city is classified into one of three categories: "Built Out" if the municipality is more than one standard deviation from the statewide mean, "Underbuilt" if the municipality is less than one standard deviation from the statewide mean, and "Average" if otherwise. The regression measures the (log odds of the) probability of filtering, if a municipality is "Built Out" or "Underbuilt", and not "Average". For example, in row three of the table, the estimated coefficient measures what effect that being "Built Out" has on the probability that a significant percent of the housing stock will filter up. The value of the coefficient is 0.342, with a p-value of less than 0.0001. This indicates that being built out has a positive and significant effect on the probability that a municipality's housing stock will filter up. This

result is supported by the literature, since a low elasticity of housing supply increases the returns to investing in and upgrading the existing housing stock, thus increasing its value and decreasing its affordability to low-moderate income households. Conversely, the effect of being "Underbuilt" has a positive and significant effect on the probability of downward filtering (coefficient of 0.6357 with p-value less than 0.0001). This indicates that relatively underbuilt municipalities have a greater future probability of downward filtering. This result is also supported by the literature, since a greater supply elasticity of housing allows existing units to more easily filter down as higher-income households move into future new housing, which usually has a higher value than older, existing housing.

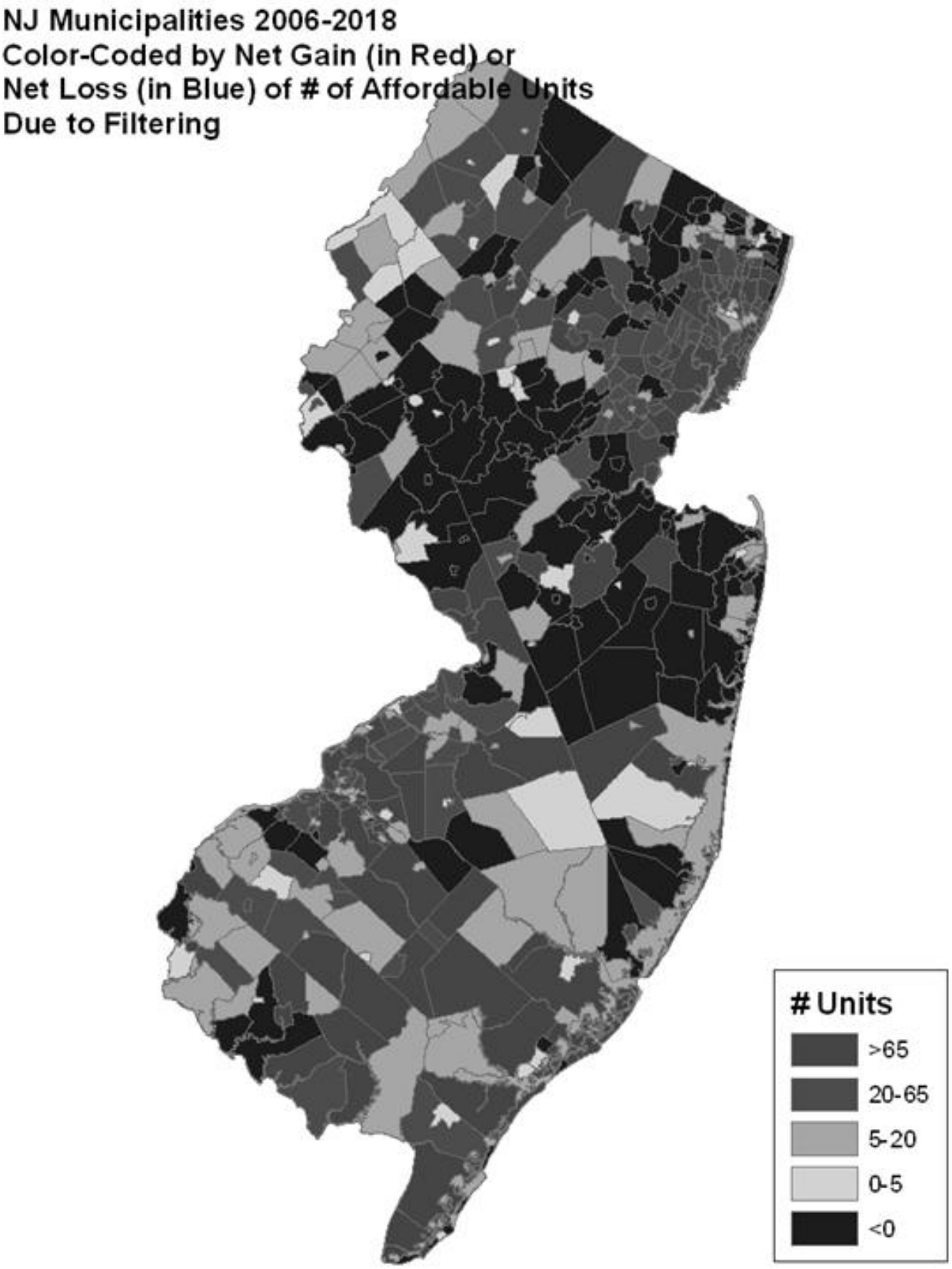
In general, the regression results are consistent with, and supported by, the academic literature. A significantly greater probability of downward filtering is associated with: being underbuilt, having a high density housing stock, being a large city, being in the down part of the housing cycle, being a low income municipality, being a low growth city, being a medium sized but low growth city, and by past levels of filtering (which is measured by the COAH regional fixed effects). <11>

The final stage in this process is to generate forecasts of future filtering. This will be done by applying the estimated model to the (observed) 2005 values of the independent variables for the housing stock in each municipality. Each municipality is assigned a categorical value of the independent variables in Table 3. Based upon the values of these variables, the probabilities of filtering up or down can be interpreted as the percent of each municipality's housing stock that either filters up or down. These percents are applied to the estimated 2014 housing stock of each municipality (from Task 1) to compute the percent of units that will filter up or down. These units will then have the affordability definition applied according to COAH's 2006 regional income limits to determine which units that filter down become affordable. Lastly, the predicted upward filtering units are netted against the predicted downward filtering units to obtain the forecast of affordable units that will be supplied by net downward filtering during the years 2006-2018, for each municipality.

9.0 FORECAST RESULTS

Project gains from downward filtering are computed for each municipality. Figure 9.1 color-codes each municipality by the number of net units that are forecast to filter:

Figure 9.1 - Net Gains/Losses from Filtering by Municipality, All Units


NJ Municipalities 2006-2018
Color-Coded by Net Gain (in Red) or
Net Loss (in Blue) of # of Affordable Units
Due to Filtering
Units
>65
20-65
5-20
0-5
<0

here for image

Source: Econsult Corporation (2007)

As the map indicates, the northern and southern parts of the state are projected to experience net gains in affordable housing due to filtering, while the central areas are projected to experience net losses. <12> Areas which experienced the largest net losses of affordable housing include Long Branch City (-429 units), Brick Township (-372), Wayne Township (-208), Sayreville Borough (-174) and a number of various Shore communities, many of which are hard to see on the map because their size is so small relative to the size of the entire state. At the other end of the spectrum, the areas which experienced the largest gains in affordable housing units due to net downward filtering are, again, the older, urban population centers of the state, including: Newark (+5,725 units), Camden (1,907), Jersey City (834), Passaic (787), Pennsauken (649), and Bayonne (423).

The municipal numbers were then aggregated to COAH regions. Figure 9.2 gives the filtering numbers, by region, for COAH's second and third Rounds:

Figure 9.2 - Total Filtering by Region: # Units

Region	1993-1999	1999-2018	Total
1	3,422	13,554	16,976
2	1,708	12,663	14,371
3	402	515	917
4	468	3,172	3,640
5	1,351	10,912	12,263
6	359	6,490	6,849
Total	**7,710**	**47,306**	**55,016**

Source: Econsult Corporation (2007)

The table indicates that--like the municipal numbers--the regions with the greatest gains in filtering contain the larger cities in the state. **From 1993 to 1999, New Jersey had a statewide gain of 7,710 affordable housing units due to net downward filtering, while a total net gain of 47,306 units is projected for the 1999 to 2018 period.**

The net gains to affordable housing from filtering are much larger for the second period than for the first period for several reasons. First, the forecast period is 20 years long, whereas the 1993-1999 period is only 6 years. This gives filtering dynamics a longer time to supply affordable units to the market. Secondly, the 1993-1999 period was a time when the housing market was mostly flat, with relatively few transactions taking place (at least compared to the 1999-2005 period). With fewer units transacting, filtering dynamics are inhibited from supplying affordable units. Thirdly, the years following 1999 were ones characterized by relatively high levels of new housing construction. Since the model incorporates the overall supply of new housing in its forecast, the level of filtering is projected to increase as existing households move into new units, thus vacating their previous units which are subsequently free to filter down. Fourthly, the forecast incorporated an assumption of "down-to-flat" conditions in the housing market. Indeed, the data overwhelmingly supports this assumption, since the market's peak year was 2005, and has steadily cooled ever since. Since periods of price depreciation (like in the early 1990s) are associated with an acceleration in downward filtering, this also acts to projects additional gains from filtering. Lastly, points Three and Four act together to accelerate filtering: a period of extensive new construction followed by a period of price deflation are both strongly associated with a period of gains from downward filtering. Hence, we believe that the relatively large magnitude of our filtering forecast is supported by both existing research on filtering dynamics and on the expected state of the overall housing market.

10.0 CONCLUSION

In summary, we believe that our results support both our approach and our conclusions. Our data is limited to just New Jersey yet provides comprehensive statewide coverage. We apply a rigorous and robust approach to defining filtering that is not sensitive to small perturbations in the data. Our results are also supported by what previous research has found about the dynamics of filtering: downward filtering is prevalent during contractions of the housing cycle while upward filtering is more prevalent during expansionary cycles of the market. Moreover, the results are consistent with the widely held perceptions about the New Jersey housing market over the course of the cycle: downward filtered units are concentrated in older urban cores like Newark, Camden and Passaic, upward filtered units are concentrated in gentrifying areas like Hoboken, in affluent suburbs, and in vacation markets such as the Jersey Shore. Finally, the deletion of these consistently unaffordable submarkets from the sample yields the result that there is net downward filtering in the low-mod segment of New Jersey's housing market, and this increased the supply of affordable housing to low-to-moderate income households during this period.

<1> Hereafter, MSAs. An MSA is a designation by the federal government that defines a metropolitan area as a center city and its surrounding suburbs. The geographic definition is typically contiguous with county boundaries.

<2> A full bibliography can be found in Appendix A.

<3> Affordable units are defined as private market, unsubsidized rental units affordable to households with incomes at or below 50 percent of HAMFI.

<4> These "upward filtering" markets included: Anaheim, Boston, Los Angeles, New York, San Francisco, and Washington, DC.

<5> Another problem with this study is that it implicitly assumes that housing markets in the data are in equilibrium. Since an equilibrium market would have no filtering occurring in it, this study is limited in its implications for the effects of subsidized housing on filtering.

<6> "Affordable Rental Units" are defined as those with gross rents less than or equal to 30 percent of household income for a household with 35 percent of the median MSA household income.

<7> COAH provided its income limit guidelines for the years 1990 through 2006. Based upon the year each dwelling

transacted, we applied that year's income limit guideline.

<8> Note: some rounding is involved. Also, because we multiply the filtering rate times the total stock of housing units, this procedure implicitly picks up rental units (which didn't transact) but nonetheless may have filtered downward to be occupied by lower-income tenants.

<9> Rutgers multiplies their filtering rate times the "estimated middle/upper income non-deteriorated units in New Jersey 1999" to obtain the number of filtered units. We obtain our filtering number by multiplying the filtering rate times the housing stock of New Jersey in 2000 (Source: U.S. Census).

<10> Municipal-level numbers can be found in Appendix B.

<11> Note: Region 6 is omitted from the regression because it is the baseline, or "control", category. This is standard in econometric regressions that use a vector of dummy variables: one category is withheld as the omitted category so that the remaining categories measure the fixed effect relative to the omitted category.

<12> Obtaining municipal-level forecasts with a high degree of precision is relatively more difficult than Regional-level forecasts. However, we still believe that our forecasts capture the essential geographic variation in filtering dynamics across municipalities, with outer-ring suburbs (new construction and redevelopment) and high-priced Shore communities (land constrained) experiencing net losses, while older urban cores experience the greatest gains.

APPENDIX A - REFERENCES

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APPENDIX B - GAINS FROM NET FILTERING BY MUNICIPALITY, 1993-1999

Municipality Name	County	COAH Region	# Units Filtered
Allendale Borough	Bergen	1	2
Alpine Borough	Bergen	1	1
Bergenfield Borough	Bergen	1	9
Bogota Borough	Bergen	1	3
Carlstadt Borough	Bergen	1	2
Cliffside Park Borough	Bergen	1	10
Closter Borough	Bergen	1	3
Cresskill Borough	Bergen	1	3
Demarest Borough	Bergen	1	2
Dumont Borough	Bergen	1	6
East Rutherford Borough	Bergen	1	3
Edgewater Borough	Bergen	1	4

Elmwood Park Borough	Bergen	1	7
Emerson Borough	Bergen	1	2
Englewood City	Bergen	1	9
Englewood Cliffs Borough	Bergen	1	2
Fair Lawn Borough	Bergen	1	12
Fairview Borough	Bergen	1	4
Fort Lee Borough	Bergen	1	17
Franklin Lakes Borough	Bergen	1	3
Garfield City	Bergen	1	11
Glen Rock Borough	Bergen	1	4
Hackensack City	Bergen	1	18
Harrington Park Borough	Bergen	1	2
Hasbrouck Heights Borough	Bergen	1	4
Haworth Borough	Bergen	1	1
Hillsdale Borough	Bergen	1	3
Ho-Ho-Kus Borough	Bergen	1	2
Leonia Borough	Bergen	1	3
Little Ferry Borough	Bergen	1	4
Lodi Borough	Bergen	1	9

Lyndhurst Township	Bergen	1	8
Mahwah Township	Bergen	1	9
Maywood Borough	Bergen	1	3
Midland Park Borough	Bergen	1	3
Montvale Borough	Bergen	1	3
Moonachie Borough	Bergen	1	1
New Milford Borough	Bergen	1	6
North Arlington Borough	Bergen	1	6
Northvale Borough	Bergen	1	2
Norwood Borough	Bergen	1	2
Oakland Borough	Bergen	1	4
Old Tappan Borough	Bergen	1	2
Oradell Borough	Bergen	1	3
Palisades Park Borough	Bergen	1	6
Paramus Borough	Bergen	1	8
Park Ridge Borough	Bergen	1	3
Ramsey Borough	Bergen	1	5
Ridgefield Borough	Bergen	1	4
Ridgefield Park Village	Bergen	1	5

Ridgewood Village	Bergen	1	8
River Edge Borough	Bergen	1	4
River Vale Township	Bergen	1	3
Rochelle Park Township	Bergen	1	2
Rockleigh Borough	Bergen	1	0
Rutherford Borough	Bergen	1	7
Saddle Brook Township	Bergen	1	5
Saddle River Borough	Bergen	1	1
South Hackensack Township	Bergen	1	1
Teaneck Township	Bergen	1	13
Tenafly Borough	Bergen	1	4
Teterboro Borough	Bergen	1	0
Upper Saddle River Borough	Bergen	1	2
Waldwick Borough	Bergen	1	3
Wallington Borough	Bergen	1	4
Washington Township	Bergen	1	2
Westwood Borough	Bergen	1	4
Woodcliff Lake Borough	Bergen	1	2

Wood-Ridge Borough	Bergen	1	7
Wyckoff Township	Bergen	1	6
Bayonne City	Hudson	1	25
East Newark Borough	Hudson	1	1
Guttenberg Town	Hudson	1	89
Harrison Town	Hudson	1	5
Hoboken City	Hudson	1	-306
Jersey City	Hudson	1	637
Kearny Town	Hudson	1	13
North Bergen Township	Hudson	1	261
Secaucus Town	Hudson	1	6
Union City	Hudson	1	765
Weehawken Township	Hudson	1	6
West New York Town	Hudson	1	240
Bloomingdale Borough	Passaic	1	3
Clifton City	Passaic	1	79
Haledon Borough	Passaic	1	3
Hawthorne Borough	Passaic	1	7
Little Falls Township	Passaic	1	4

North Haledon Borough	Passaic	1	3
Passaic City	Passaic	1	516
Paterson City	Passaic	1	637
Pompton Lakes Borough	Passaic	1	4
Prospect Park Borough	Passaic	1	2
Ringwood Borough	Passaic	1	4
Totowa Borough	Passaic	1	3
Wanaque Borough	Passaic	1	3
Wayne Township	Passaic	1	18
West Milford Township	Passaic	1	9
West Paterson Borough	Passaic	1	4
Andover Borough	Sussex	1	0
Andover Township	Sussex	1	2
Branchville Borough	Sussex	1	1
Byram Township	Sussex	1	3
Frankford Township	Sussex	1	2
Franklin Borough	Sussex	1	2
Fredon Township	Sussex	1	1
Green Township	Sussex	1	1

Hamburg Borough	Sussex	1	1
Hampton Township	Sussex	1	2
Hardyston Township	Sussex	1	3
Hopatcong Borough	Sussex	1	6
Lafayette Township	Sussex	1	1
Montague Township	Sussex	1	2
Newton Town	Sussex	1	3
Ogdensburg Borough	Sussex	1	1
Sandyston Township	Sussex	1	1
Sparta Township	Sussex	1	6
Stanhope Borough	Sussex	1	2
Stillwater Township	Sussex	1	2
Sussex Borough	Sussex	1	1
Vernon Township	Sussex	1	9
Walpack Township	Sussex	1	0
Wantage Township	Sussex	1	3
City Of Orange Township	Essex	2	12
Belleville Township	Essex	2	13
Bloomfield Township	Essex	2	18

Caldwell Borough	Essex	2	3
Cedar Grove Township	Essex	2	4
East Orange City	Essex	2	360
Essex Fells Borough	Essex	2	1
Fairfield Township	Essex	2	2
Glen Ridge Borough	Essex	2	2
Irvington Township	Essex	2	382
Livingston Township	Essex	2	9
Maplewood Township	Essex	2	8
Millburn Township	Essex	2	7
Montclair Township	Essex	2	-108
Newark City	Essex	2	404
North Caldwell Borough	Essex	2	2
Nutley Township	Essex	2	10
Roseland Borough	Essex	2	2
South Orange Village Township	Essex	2	6
Verona Township	Essex	2	6
West Caldwell Township	Essex	2	4
West Orange Township	Essex	2	17

Boonton Town	Morris	2	3
Boonton Township	Morris	2	2
Butler Borough	Morris	2	3
Chatham Borough	Morris	2	3
Chatham Township	Morris	2	4
Chester Borough	Morris	2	1
Chester Township	Morris	2	2
Denville Township	Morris	2	6
Dover Town	Morris	2	6
East Hanover Township	Morris	2	4
Florham Park Borough	Morris	2	3
Hanover Township	Morris	2	4
Harding Township	Morris	2	1
Jefferson Township	Morris	2	7
Kinnelon Borough	Morris	2	3
Lincoln Park Borough	Morris	2	4
Long Hill Township	Morris	2	6
Madison Borough	Morris	2	2
Mendham Borough	Morris	2	2

Mendham Township	Morris	2	2
Mine Hill Township	Morris	2	7
Montville Township	Morris	2	8
Morris Plains Borough	Morris	2	7
Morris Township	Morris	2	2
Morristown Town	Morris	2	2
Mount Arlington Borough	Morris	2	9
Mount Olive Township	Morris	2	-1
Mountain Lakes Borough	Morris	2	2
Netcong Borough	Morris	2	19
Parsippany-Troy Hills Township	Morris	2	3
Pequannock Township	Morris	2	-7
Randolph Township	Morris	2	8
Riverdale Borough	Morris	2	1
Rockaway Borough	Morris	2	2
Rockaway Township	Morris	2	8
Roxbury Township	Morris	2	8
Victory Gardens Borough	Morris	2	1

Washington Township	Morris	2	2
Wharton Borough	Morris	2	2
Berkeley Heights Township	Union	2	4
Clark Township	Union	2	6
Cranford Township	Union	2	8
Elizabeth City	Union	2	214
Fanwood Borough	Union	2	3
Garwood Borough	Union	2	2
Hillside Township	Union	2	7
Kenilworth Borough	Union	2	3
Linden City	Union	2	15
Mountainside Borough	Union	2	2
New Providence Borough	Union	2	4
Plainfield City	Union	2	173
Rahway City	Union	2	10
Roselle Borough	Union	2	7
Roselle Park Borough	Union	2	5
Scotch Plains Township	Union	2	8
Springfield Township	Union	2	6

Summit City	Union	2	8
Union Township	Union	2	19
Westfield Town	Union	2	10
Winfield Township	Union	2	2
Allamuchy Township	Warren	2	2
Alpha Borough	Warren	2	1
Belvidere Town	Warren	2	1
Blairstown Township	Warren	2	2
Franklin Township	Warren	2	1
Frelinghuysen Township	Warren	2	1
Greenwich Township	Warren	2	2
Hackettstown Town	Warren	2	4
Hardwick Township	Warren	2	1
Harmony Township	Warren	2	1
Hope Township	Warren	2	1
Independence Township	Warren	2	2
Knowlton Township	Warren	2	1
Liberty Township	Warren	2	1
Lopatcong Township	Warren	2	2

Mansfield Township	Warren	2	2
Oxford Township	Warren	2	1
Phillipsburg Town	Warren	2	-158
Pohatcong Township	Warren	2	2
Washington Borough	Warren	2	3
Washington Township	Warren	2	2
White Township	Warren	2	2
Alexandria Township	Hunterdon	3	2
Bethlehem Township	Hunterdon	3	1
Bloomsbury Borough	Hunterdon	3	0
Califon Borough	Hunterdon	3	1
Clinton Town	Hunterdon	3	1
Clinton Township	Hunterdon	3	4
Delaware Township	Hunterdon	3	2
East Amwell Township	Hunterdon	3	2
Flemington Borough	Hunterdon	3	2
Franklin Township	Hunterdon	3	1
Frenchtown Borough	Hunterdon	3	1
Glen Gardner Borough	Hunterdon	3	1

Hampton Borough	Hunterdon	3	1
High Bridge Borough	Hunterdon	3	2
Holland Township	Hunterdon	3	2
Kingwood Township	Hunterdon	3	2
Lambertville City	Hunterdon	3	2
Lebanon Borough	Hunterdon	3	1
Lebanon Township	Hunterdon	3	2
Milford Borough	Hunterdon	3	1
Raritan Township	Hunterdon	3	7
Readington Township	Hunterdon	3	6
Stockton Borough	Hunterdon	3	0
Tewksbury Township	Hunterdon	3	2
Union Township	Hunterdon	3	19
West Amwell Township	Hunterdon	3	1
Carteret Borough	Middlesex	3	7
Cranbury Township	Middlesex	3	1
Dunellen Borough	Middlesex	3	2
East Brunswick Township	Middlesex	3	16
Edison Township	Middlesex	3	34

Helmetta Borough	Middlesex	3	1
Highland Park Borough	Middlesex	3	6
Jamesburg Borough	Middlesex	3	2
Metuchen Borough	Middlesex	3	5
Middlesex Borough	Middlesex	3	5
Milltown Borough	Middlesex	3	3
Monroe Township	Middlesex	3	12
New Brunswick City	Middlesex	3	79
North Brunswick Township	Middlesex	3	13
Old Bridge Township	Middlesex	3	20
Perth Amboy City	Middlesex	3	-155
Piscataway Township	Middlesex	3	16
Plainsboro Township	Middlesex	3	9
Sayreville Borough	Middlesex	3	14
South Amboy City	Middlesex	3	3
South Brunswick Township	Middlesex	3	13
South Plainfield Borough	Middlesex	3	7
South River Borough	Middlesex	3	6
Spotswood Borough	Middlesex	3	3

Woodbridge Township	Middlesex	3	34
Bedminster Township	Somerset	3	4
Bernards Township	Somerset	3	9
Bernardsville Borough	Somerset	3	3
Bound Brook Borough	Somerset	3	107
Branchburg Township	Somerset	3	5
Bridgewater Township	Somerset	3	15
Far Hills Borough	Somerset	3	1
Franklin Township	Somerset	3	1
Green Brook Township	Somerset	3	2
Hillsborough Township	Somerset	3	12
Manville Borough	Somerset	3	4
Millstone Borough	Somerset	3	0
Montgomery Township	Somerset	3	-8
North Plainfield Borough	Somerset	3	9
Peapack-Gladstone Borough	Somerset	3	1
Raritan Borough	Somerset	3	3
Rocky Hill Borough	Somerset	3	0
Somerville Borough	Somerset	3	4

South Bound Brook Borough	Somerset	3	2
Warren Township	Somerset	3	4
Watchung Borough	Somerset	3	2
East Windsor Township	Mercer	4	9
Ewing Township	Mercer	4	12
Hamilton Township	Mercer	4	32
Hightstown Borough	Mercer	4	2
Hopewell Borough	Mercer	4	1
Hopewell Township	Mercer	4	5
Lawrence Township	Mercer	4	10
Pennington Borough	Mercer	4	1
Princeton Borough	Mercer	4	3
Princeton Township	Mercer	4	6
Trenton City	Mercer	4	22
Washington Township	Mercer	4	2
West Windsor Township	Mercer	4	7
Aberdeen Township	Monmouth	4	6
Allenhurst Borough	Monmouth	4	1
Allentown Borough	Monmouth	4	1

Asbury Park City	Monmouth	4	386
Atlantic Highlands Borough	Monmouth	4	2
Avon-By-The-Sea Borough	Monmouth	4	2
Belmar Borough	Monmouth	4	4
Bradley Beach Borough	Monmouth	4	3
Brielle Borough	Monmouth	4	2
Colts Neck Township	Monmouth	4	3
Deal Borough	Monmouth	4	1
Eatontown Borough	Monmouth	4	6
Englishtown Borough	Monmouth	4	1
Fair Haven Borough	Monmouth	4	2
Farmingdale Borough	Monmouth	4	1
Freehold Borough	Monmouth	4	4
Freehold Township	Monmouth	4	10
Hazlet Township	Monmouth	4	7
Highlands Borough	Monmouth	4	3
Holmdel Township	Monmouth	4	4
Howell Township	Monmouth	4	15
Interlaken Borough	Monmouth	4	1

Keansburg Borough	Monmouth	4	4
Keyport Borough	Monmouth	4	3
Little Silver Borough	Monmouth	4	2
Loch Arbour Village	Monmouth	4	0
Long Branch City	Monmouth	4	28
Manalapan Township	Monmouth	4	10
Manasquan Borough	Monmouth	4	3
Marlboro Township	Monmouth	4	11
Matawan Borough	Monmouth	4	3
Middletown Township	Monmouth	4	23
Millstone Township	Monmouth	4	3
Monmouth Beach Borough	Monmouth	4	2
Neptune City Borough	Monmouth	4	2
Neptune Township	Monmouth	4	138
Ocean Township	Monmouth	4	3
Oceanport Borough	Monmouth	4	2
Red Bank Borough	Monmouth	4	5
Roosevelt Borough	Monmouth	4	0
Rumson Borough	Monmouth	4	3

Sea Bright Borough	Monmouth	4	1
Sea Girt Borough	Monmouth	4	1
Shrewsbury Borough	Monmouth	4	1
Shrewsbury Township	Monmouth	4	1
South Belmar Borough	Monmouth	4	3
Spring Lake Borough	Monmouth	4	2
Spring Lake Heights Borough	Monmouth	4	3
Tinton Falls Borough	Monmouth	4	-3
Union Beach Borough	Monmouth	4	2
Upper Freehold Township	Monmouth	4	2
Wall Township	Monmouth	4	9
West Long Branch Borough	Monmouth	4	2
Barnegat Light Borough	Ocean	4	1
Barnegat Township	Ocean	4	6
Bay Head Borough	Ocean	4	1
Beach Haven Borough	Ocean	4	3
Beachwood Borough	Ocean	4	3
Berkeley Township	Ocean	4	-7

Brick Township	Ocean	4	31
Eagleswood Township	Ocean	4	1
Harvey Cedars Borough	Ocean	4	1
Island Heights Borough	Ocean	4	1
Jackson Township	Ocean	4	14
Lacey Township	Ocean	4	10
Lakehurst Borough	Ocean	4	-50
Lakewood Township	Ocean	4	-138
Lavallette Borough	Ocean	4	3
Little Egg Harbor Township	Ocean	4	7
Long Beach Township	Ocean	4	9
Manchester Township	Ocean	4	-317
Mantoloking Borough	Ocean	4	1
Ocean Gate Borough	Ocean	4	1
Ocean Township	Ocean	4	3
Pine Beach Borough	Ocean	4	1
Plumsted Township	Ocean	4	3
Point Pleasant Beach Borough	Ocean	4	3

Point Pleasant Borough	Ocean	4	8
Seaside Heights Borough	Ocean	4	3
Seaside Park Borough	Ocean	4	3
Ship Bottom Borough	Ocean	4	2
South Toms River Borough	Ocean	4	1
Stafford Township	Ocean	4	10
Surf City Borough	Ocean	4	2
Tuckerton Borough	Ocean	4	2
Bass River Township	Burlington	5	1
Beverly City	Burlington	5	1
Bordentown City	Burlington	5	2
Bordentown Township	Burlington	5	3
Burlington City	Burlington	5	4
Burlington Township	Burlington	5	7
Chesterfield Township	Burlington	5	1
Cinnaminson Township	Burlington	5	5
Delanco Township	Burlington	5	1
Delran Township	Burlington	5	6
Eastampton Township	Burlington	5	2
Edgewater Park Township	Burlington	5	3

Evesham Township	Burlington	5	15
Fieldsboro Borough	Burlington	5	0
Florence Township	Burlington	5	4
Hainesport Township	Burlington	5	2
Lumberton Township	Burlington	5	4
Mansfield Township	Burlington	5	2
Maple Shade Township	Burlington	5	9
Medford Lakes Borough	Burlington	5	2
Medford Township	Burlington	5	8
Moorestown Township	Burlington	5	7
Mount Holly Township	Burlington	5	4
Mount Laurel Township	Burlington	5	16
New Hanover Township	Burlington	5	1
North Hanover Township	Burlington	5	3
Palmyra Borough	Burlington	5	3
Pemberton Borough	Burlington	5	1
Pemberton Township	Burlington	5	10
Riverside Township	Burlington	5	3
Riverton Borough	Burlington	5	1

Shamong Township	Burlington	5	2
Southampton Township	Burlington	5	4
Springfield Township	Burlington	5	6
Tabernacle Township	Burlington	5	2
Washington Township	Burlington	5	2
Westampton Township	Burlington	5	2
Willingboro Township	Burlington	5	10
Woodland Township	Burlington	5	1
Wrightstown Borough	Burlington	5	-14
Audubon Borough	Camden	5	4
Audubon Park Borough	Camden	5	2
Barrington Borough	Camden	5	3
Bellmawr Borough	Camden	5	4
Berlin Borough	Camden	5	2
Berlin Township	Camden	5	2
Brooklawn Borough	Camden	5	1
Camden City	Camden	5	465
Cherry Hill Township	Camden	5	26
Chesilhurst Borough	Camden	5	1

Clementon Borough	Camden	5	2
Collingswood Borough	Camden	5	7
Gibbsboro Borough	Camden	5	1
Gloucester City	Camden	5	4
Gloucester Township	Camden	5	23
Haddon Heights Borough	Camden	5	3
Haddon Township	Camden	5	6
Haddonfield Borough	Camden	5	4
Hi-Nella Borough	Camden	5	1
Laurel Springs Borough	Camden	5	1
Lawnside Borough	Camden	5	1
Lindenwold Borough	Camden	5	441
Magnolia Borough	Camden	5	2
Merchantville Borough	Camden	5	2
Mount Ephraim Borough	Camden	5	2
Oaklyn Borough	Camden	5	2
Pennsauken Township	Camden	5	12
Pine Hill Borough	Camden	5	4
Pine ValleyBorough	Camden	5	0

Runnemede Borough	Camden	5	3
Somerdale Borough	Camden	5	2
Stratford Borough	Camden	5	3
Tavistock Borough	Camden	5	0
Voorhees Township	Camden	5	10
Waterford Township	Camden	5	3
Winslow Township	Camden	5	12
Woodlynne Borough	Camden	5	1
Clayton Borough	Gloucester	5	3
Deptford Township	Gloucester	5	10
East Greenwich Township	Gloucester	5	2
Elk Township	Gloucester	5	2
Franklin Township	Gloucester	5	1
Glassboro Borough	Gloucester	5	73
Greenwich Township	Gloucester	5	2
Harrison Township	Gloucester	5	3
Logan Township	Gloucester	5	2
Mantua Township	Gloucester	5	5
Monroe Township	Gloucester	5	12

National Park Borough	Gloucester	5	1
Newfield Borough	Gloucester	5	1
Paulsboro Borough	Gloucester	5	3
Pitman Borough	Gloucester	5	3
South Harrison Township	Gloucester	5	0
Swedesboro Borough	Gloucester	5	1
Washington Township	Gloucester	5	2
Wenonah Borough	Gloucester	5	1
West Deptford Township	Gloucester	5	8
Westville Borough	Gloucester	5	2
Woodbury City	Gloucester	5	4
Woodbury Heights Borough	Gloucester	5	1
Woolwich Township	Gloucester	5	1
Absecon City	Atlantic	6	3
Atlantic City	Atlantic	6	45
Brigantine City	Atlantic	6	9
Buena Borough	Atlantic	6	2
Buena Vista Township	Atlantic	6	3
Corbin City	Atlantic	6	0

Egg Harbor City	Atlantic	6	2
Egg Harbor Township	Atlantic	6	12
Estell Manor City	Atlantic	6	1
Folsom Borough	Atlantic	6	1
Galloway Township	Atlantic	6	10
Hamilton Township	Atlantic	6	32
Hammonton Town	Atlantic	6	4
Linwood City	Atlantic	6	3
Longport Borough	Atlantic	6	2
Margate City	Atlantic	6	7
Mullica Township	Atlantic	6	2
Northfield City	Atlantic	6	3
Pleasantville City	Atlantic	6	7
Port Republic City	Atlantic	6	1
Somers Point City	Atlantic	6	5
Ventnor City	Atlantic	6	8
Weymouth Township	Atlantic	6	1
Avalon Borough	Cape May	6	5
Cape May City	Cape May	6	4

Cape May Point Borough	Cape May	6	1
Dennis Township	Cape May	6	2
Lower Township	Cape May	6	13
Middle Township	Cape May	6	7
North Wildwood City	Cape May	6	7
Ocean City	Cape May	6	19
Sea Isle City	Cape May	6	6
Stone Harbor Borough	Cape May	6	3
Upper Township	Cape May	6	5
West Cape May Borough	Cape May	6	1
West Wildwood Borough	Cape May	6	1
Wildwood City	Cape May	6	6
Wildwood Crest Borough	Cape May	6	4
Woodbine Borough	Cape May	6	1
Bridgeton City	Cumberland	6	27
Commercial Township	Cumberland	6	2
Deerfield Township	Cumberland	6	1
Downe Township	Cumberland	6	1
Fairfield Township	Cumberland	6	2

Greenwich Township	Cumberland	6	2
Hopewell Township	Cumberland	6	5
Lawrence Township	Cumberland	6	10
Maurice River Township	Cumberland	6	2
Millville City	Cumberland	6	10
Shiloh Borough	Cumberland	6	0
Stow Creek Township	Cumberland	6	0
Upper Deerfield Township	Cumberland	6	3
Vineland City	Cumberland	6	20
Alloway Township	Salem	6	0
Carneys Point Township	Salem	6	3
Elmer Borough	Salem	6	1
Elsinboro Township	Salem	6	1
Lower Alloways Creek Township	Salem	6	1
Mannington Township	Salem	6	0
Oldmans Township	Salem	6	1
Penns Grove Borough	Salem	6	2
Pennsville Township	Salem	6	6

Pilesgrove Township	Salem	6	1
Pittsgrove Township	Salem	6	3
Quinton Township	Salem	6	1
Salem City	Salem	6	3
Upper Pittsgrove Township	Salem	6	1
Woodstown Borough	Salem	6	2

Task 3 - Compensatory Benefits to Developers for Provision of Affordable Housing:

Inclusionary Housing:
Lessons from the National Experience

Prepared By:

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November 5, 2007

Submitted To:

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101 South Broad Street
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Acknowledgements

Great thanks is expressed to everyone who provided research and information for this report, including but not limited to the numerous people who provided information about existing inclusionary housing programs across the nation, including those listed in Exhibit C attached to this report.

Special thanks to Business and Professional People for the Public Interest (BPI) in Chicago, Illinois who provided research assistance for this project. BPI's assistance in gathering ordinances, program information, and existing studies was invaluable to this report.

Executive Summary

For over two decades, under the regulatory framework established by the State of New Jersey's Fair Housing Act and administered by the Council on Affordable Housing (COAH), local governments in the state of New Jersey have partnered with developers to create affordable housing within market-rate developments. COAH is now in the process of attempting to re-write the Third Round Rules governing this regulatory framework.

During Rounds I and II, hundreds of communities in New Jersey created affordable housing plans and submitted them to COAH for certification in order to gain a "safe harbor" from any possible "builder's remedy" lawsuits filed by developers. These plans had to create a "realistic opportunity" for the development of affordable housing. Many of these plans involved inclusionary housing provisions, where market-rate developments on certain sites were required to include affordable housing (typically 15-20% affordable housing) and in return, were provided with a presumptive density level. By requiring the inclusion of affordable housing within market-rate developments on sites that provided at least a presumptive level of density, municipalities and developers jointly created tens of thousands of affordable homes, many of them *without any state or federal financing*. In compiling this impressive record on affordable housing, New Jersey has embodied the true spirit of Supreme Court Justice Louis Brandeis's call for our states to be "laboratories of democracy."

Of course, no system is perfect. In drafting the Third Round rules, New Jersey must examine how to best improve the state regulatory framework that has helped to create so much affordable housing and that has helped to inspire other state and local efforts across the country. No other state has passed a statewide regulatory framework that is as far-reaching and comprehensive as New Jersey, but hundreds of inclusionary housing programs now exist nationwide (some of them passed prior to the beginning of New Jersey's efforts, most of them passed after) in a diverse array of locations. Many of these programs have been quite successful and now represent a significant portion of the affordable housing production in these communities.

In order to assist COAH in its efforts to produce the final Third Round Rules, we are submitting this report providing information about inclusionary housing programs from across the country. Inclusionary housing programs, for purposes of this report, are defined as programs where the inclusion of affordable housing in an otherwise market-rate development is required or encouraged. This report uses existing research and literature on inclusionary housing programs as well as an in-depth review of approximately 30 programs nationwide in over 10 states to provide COAH with information on the following two aspects of inclusionary housing programs:

1) Cost Offsets or Incentives provided to developers as part of an inclusionary housing program; and

2) Fee in Lieu Payment provisions included in inclusionary housing programs.

Cost Offsets are defined for purposes of this report as any benefit provided to a development that includes affordable housing in order to help defray the cost of creating the affordable housing or in order to help improve the financial feasibility of the project (such as increased density and zoning flexibility, parking reductions, fee waivers and expedited approval processes). National experience indicates that cost offsets, coupled with a mandatory affordable housing requirement, serve as a powerful tool for creating affordable housing. However, experience nationwide also reveals that programs both with and without cost offsets have enjoyed success at producing significant amounts of affordable housing. The success of any inclusionary housing program appears to be a product of local market conditions, local political conditions, and the presence or absence of a statewide regulatory framework that encourages or requires the adoption of inclusionary housing practices in the marketplace.

Fee in lieu payments, for purposes of this report, are defined as payments made by developers "in lieu of" building affordable units as part of the market-rate development. Fee in lieu payment provisions can be calculated and designed differently in order to address different policy goals. Fee in lieu payment provisions can be structured to primarily: a) encourage the construction of affordable units on site; b) encourage the construction of affordable units on-site and off-site; c) raise revenue for affordable housing; or d) produce a balanced mix of affordable housing units and revenue for affordable housing. In addition, a well-crafted fee in lieu payment provision can also effectively help a local government: a) to address a broader array of housing needs; b) to provide a way for very small developments to participate in an inclusionary housing program; and c) to deal with policy dilemmas such as difficult to develop or environmentally-sensitive sites, the desire to stimulate development in certain locations of a community, or situations where the affordable units will be difficult to sustain over time (e.g. a luxury high-rise building with excessively high condo assessment fees).

As New Jersey takes steps to "re-tool" its regulatory framework for Round III and to adapt its framework to a changed world and marketplace, New Jersey can draw upon the lessons and experiences with inclusionary housing programs in other parts of the country to inform its own efforts at home. The following five recommendations are drawn from the national experience and are crafted to aid New Jersey in its efforts.

Recommendation #1: Establish a predictable affordable housing requirement coupled with a required density bonus or a required presumptive density level. COAH Rules should require local municipalities to establish a clear and predictable affordable housing requirement and a corresponding presumptive density level or density bonus.

Recommendation #2: Allow state and federal financing/subsidies to be used for greater and increased affordability. Inclusionary developments under Round III should be allowed to use state or federal housing subsidies BUT ONLY IF those state or federal housing dollars are used to create MORE affordable housing units than are required under COAH rules and/or only if those state or federal housing dollars are used to make the affordable housing units MORE AFFORDABLE than is required under COAH rules.

Recommendation #3: Link more generous cost offsets to greater and increased affordability. Local municipalities should provide additional cost offsets (e.g. increased density) in those developments where the developer exceeds the minimum affordable housing percentage required and/or exceeds the minimum affordability levels required. COAH should consider ways to reward and incentivize local municipalities to pursue this route.

Recommendation #4: Calculate fee in lieu amounts, at a minimum, as an amount equal the cost to construct an affordable housing unit or the cost to subsidize a market-rate unit so that it can sell or rent at an affordable price. Fee in lieu amounts should be predictable and clear so that developers can calculate them; and they should be calculated as explained above in order to encourage the creation of affordable housing units as part of market-rate developments and in order to ensure that a significant amount of money is actually collected in the case that the developer chooses or is allowed to pay the fee.

Recommendation #5: Utilize Fee in Lieu provisions to address policy goals and dilemmas. COAH should consider rules that would allow individual municipalities to establish some local criteria for the payment of the fee in lieu in order to address local policy issues. Local communities could benefit from the ability to collect fees based on their discretion or based on specific local criteria to be met by the development in order to help address a variety of local policy concerns (e.g. economic hardship cases; environmental site issues; desire to collect money from downtown development instead of units, etc.).

These recommendations are more fully explained in the Recommendations section of this report.

Inclusionary housing policies work when they best reflect the market forces and political realities of the state and local contexts in which they work. The recommendations listed above must be adapted to best address realities in New Jersey. However, experience from around the country and from two decades of inclusionary housing in New Jersey demonstrate that inclusionary housing can work; inclusionary housing does work when structured correctly; and inclusionary housing must work if states and localities hope to make significant progress towards fully addressing the need for a greater supply of affordable housing overall and a greater supply of affordable housing in locations near jobs, opportunity, and existing infrastructure.

TABLE OF CONTENTS

I. Introduction

For over two decades, under the regulatory framework established by the State of New Jersey's Fair Housing Act and administered by the Council on Affordable Housing (COAH), local governments in the state of New Jersey have partnered with developers to create affordable housing within market-rate developments. COAH is now in the process of attempting to re-write the Third Round Rules governing this regulatory framework.

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In order to assist COAH in its efforts to produce the final Third Round Rules, we are submitting this report providing information about inclusionary housing programs from across the country. Inclusionary housing programs, for purposes of this report, are defined as programs where the inclusion of affordable housing in an otherwise market-rate development is required or encouraged. This report uses existing research and literature on inclusionary housing programs as well as an in-depth review of approximately 30 programs nationwide in over 10 states to provide COAH with information on the following two aspects of inclusionary housing programs:

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2) Fee in Lieu Payment provisions included in inclusionary housing programs.

Cost Offsets are defined for purposes of this report as any benefit provided to a development that includes affordable housing in order to help defray the cost of creating the affordable housing or in order to help improve the financial feasibility of the project. Cost Offsets can include, but are not limited to: density bonuses, zoning/design flexibility (e.g. reduced setbacks, increased height, increased floor area ratios, etc), parking reductions, property use/housing type flexibility (e.g. mixing townhomes and duplexes with single-family homes), fee waivers, reduced finishes or unit sizes, tax breaks, cash subsidies, and expedited approval processes.

Fee in lieu payments, for purposes of this report, are defined as payments made by developers "in lieu of" building affordable units as part of the market-rate development. Fee in lieu payment provisions can be calculated and designed differently in order to address policy goals.

The report includes: 1) a brief summary of inclusionary housing and its impact and presence nationwide; 2) a detailed review and analysis of different kinds of cost offsets offered by programs across the county; 3) a detailed review and analysis of different fee-in-lieu payment provisions from across the country; and 4) some concluding recommendations related to these two areas. Exhibit A to the report provides a summary of program details of a representative sampling of inclusionary housing programs across the county; Exhibit B to the report provides a list of the cost offsets provided by a representative sampling of programs nationwide; Exhibit C provides a list of key individuals who were interviewed and who provided key information about specific inclusionary housing programs; and Exhibit D provides a sampling of economic feasibility studies and affordable housing studies completed by specific jurisdictions either examining or implementing an inclusionary housing program.

II. Inclusionary Housing

Inclusionary housing programs require or encourage the inclusion of a certain percentage of affordable housing in all developments of a certain size (e.g. five units) or in all developments that meet certain characteristics (e.g. developments that require a special permit). A few programs (Boulder, Colorado; Davidson, North Carolina; and Irvine, California; for example) require that essentially all residential development include some affordable housing. Many programs include "cost offsets" that are meant to help defray the cost of creating the affordable housing in the market-rate developments. Many programs allow developers to pay a fee "in lieu" of including affordable housing in the market-rate development. These fees are then typically deposited into a local housing trust fund and used to help address the need for affordable housing in the community in some other way - through purchase price assistance to first-time homebuyers, through subsidizing land acquisition for affordable housing, by providing gap financing to subsidize construction costs or write-down debt, to fund rental subsidies, etc.

Inclusionary housing programs are not a panacea for the affordable housing crisis; but they can create and preserve significant numbers of affordable housing, especially in expensive and high-cost markets where affordable housing is sorely lacking and desperately needed. They can produce affordable homes and apartments without the need for a new public funding stream; they can transform the face and image of affordable housing by creating affordable homes and apartments as a seamless part of market-rate developments; and they can help to mitigate the broader and highly negative consequences that can flow from a lack of affordable housing near jobs and opportunity - e.g. increased traffic congestion and poorer air quality, rising economic insecurity for working and middle-class families, declining social fabric and community ties, and reduced economic competitiveness.

In California, according to a 2003 survey that identified and surveyed approximately 107 local programs, one-third of these surveyed programs successfully produced over 34,000 units of affordable housing over thirty years. <i> According to a more recent study in California, there are now over 170 local jurisdictions with inclusionary housing

programs and since 1999, these programs have created 29,281 affordable homes statewide. <ii> In the D.C. metro area, where the nation's best-known inclusionary housing program exists in Montgomery County, Maryland, four programs produced over 15,000 units between 1974 and 2004. <iii> This production number in the DC metro area continues to increase as do the number of local programs. Our nation's capital has adopted an inclusionary housing program that will add to these numbers. <iv> In New Jersey, from 1985 to 2000, at least 250 local governments used "de facto" inclusionary housing programs as part of their COAH-certified plans to create over 10,000 units of affordable housing in 15 years. <v>

In Massachusetts, inclusionary housing enjoys a strong presence due in large part to Chapter 40B (the state's Comprehensive Permit Law, also known as the "Anti-Snob Zoning Act"). Chapter 40B itself is a form of "developer-driven inclusionary housing" - developers can apply for a comprehensive permit and propose the zoning on a development site if they include 25% affordable housing. If that site is located in a community with less than 10% affordable housing, the developer can appeal the local decision (any denial or an approval with restrictions) to the statewide Housing Appeals Committee and seek relief there from those zoning and development standards that make the inclusion of 25% affordable housing infeasible. Chapter 40B has evolved into a process of negotiation between towns and developers (most developments no longer go to the Housing Appeals Committee) and has spurred the construction of over 43,000 housing units in 736 developments, with 23,000 units restricted and affordable to households at or below 80% of the AMI. <vi>

Chapter 40B has also spurred local communities to take action on their own by passing inclusionary housing provisions - as of 2002, it was estimated that at least 118 communities in Massachusetts had some form of voluntary or mandatory inclusionary zoning requirement or incentive. <vii> More Massachusetts communities since then have adopted inclusionary provisions. <viii>

Even though the lion's share of the programs and production may exist in New Jersey, California, Massachusetts, and the D.C. metro area, inclusionary housing has truly become a national phenomenon in the last decade. At least 300 to 400 local governments now use some form of inclusionary housing program. Inclusionary housing programs now exist in booming suburbs, college towns, mid-sized cities, large urban centers, resort towns, and affluent bedroom communities near jobs. They can be found in every part of the country: from states like California, Colorado, New Mexico, and Wyoming in the West to Illinois and Wisconsin in the heartland to Florida and North Carolina in the South to Virginia, Maryland, Massachusetts, Connecticut, New Jersey, and Vermont on the East Coast.

In Colorado, at least four communities (Denver, Boulder, Longmont, and Lafayette) have created successful programs since the mid-1990s. In Illinois, four communities in the Chicago metro region (Chicago, Highland Park, Evanston, and Lake Forest) have passed programs since 2002; and a fifth, St. Charles, which has been requiring some affordable housing on an ad hoc basis in new developments, is now drafting a formal, mandatory ordinance. Two additional suburban communities in Chicago (Arlington Heights and Lindenhurst) are requiring developers in certain situations to include affordable housing in new developments.

In North Carolina, a handful of communities in the research triangle near Raleigh-Durham (including Davidson and Chapel Hill) have passed or implemented local programs. And, the resurgence of some of America's urban centers has caused places like New York City, Chicago, Boston, San Diego, San Francisco, and Sacramento to pass programs. There is even a program in Wyoming - in Jackson, Wyoming, where the local community has implemented a program to address the lack of workforce housing in the resort area of Jackson Hole. Inclusionary housing exists in many places and as the affordable housing crisis arises as a serious issue in more localities, more and more communities are looking at this tool and considering whether to adopt a program. For a representative sampling of programs nationwide, their production numbers and characteristics, please see Exhibit A to this report.

III. Cost Offsets

As stated earlier, costs offsets for purposes of this report are defined as any benefit provided to a development that includes affordable housing in order to help defray the cost of creating the affordable housing or in order to help improve the financial feasibility of the project. Cost offsets are often used in inclusionary housing programs because: 1) they can help to ensure that the cost of creating affordable housing is broadly shared; 2) they can help to make the program more politically palatable; and 3) they can help to ensure the long-term success of the program by providing something of benefit to the developers who will be regulated by the program and who will be producing the housing under the program.

Cost offsets arise as a possible component of any inclusionary housing program because when a public entity attempts to mitigate, solve, or address any public problem, one of the first questions asked is, "Hey, who's paying for this?" Decreasing pollution, fighting crime, ensuring an adequate supply of energy, creating a sufficient array of transportation options, making sure there is enough park-space, ensuring that development is orderly - in our modern era, all of these objectives typically require public spending, public regulation, or some other form of collective public action. This public action usually involves some cost and someone has to pay that cost.

Providing affordable housing is no different - there is no free lunch. *Someone* always pays for the affordable housing. Under an inclusionary housing program, the affordable housing can be paid for by some combination of the following groups: landowners, market-rate homebuyers, developers, or the broader public or community. If a program contains significant "costs offsets" (density bonuses, flexible zoning or design standards, parking reductions, fee waivers, an expedited approval process, cash subsidies, etc.), then it is the broader public that pays for all or some portion of the cost of creating the affordable units.

If a program does not contain "cost offsets" or contains cost offsets that are insufficient to fully offset the cost of creating the affordable units, then the burden of paying for the affordable housing (or the portion of the cost of the affordable housing not covered by the offsets) inevitably falls to the developer, the landowner, or market-rate homebuyers, or some combination of all three.

The imposition of a mandatory affordable housing requirement in the zoning code could serve to do what many other provisions in a zoning code do - to reduce the price of land for those parcels affected by the regulation (in this case an affordable housing requirement). Developers will negotiate for a lower acquisition price for the property in order to "pay for" the cost of the affordable units that have to be built.

Or, it is possible, under certain circumstances, that the developer will be able to charge the market-rate homebuyers a marginally higher price for the market-rate homes. Or, it is possible that the developer will realize less profit than the developer would have realized without the affordable housing component. Or, some combination of all three potential outcomes could occur.

It is also possible that the affordable housing requirement (especially if not accompanied by cost offsets) will be so costly that it will cause developers to produce less housing (including fewer affordable units) and/or cause landowners to use land for other purposes than residential development, both of which could further constrict housing supply and cause the affordable housing problem to worsen, not improve.

However, economic literature, existing research, and experience with inclusionary housing programs suggest that: a) inclusionary housing programs have not caused development to slow and b) over the long run, it is most likely, in a program with no cost offsets or with cost offsets that are insufficient to cover the full cost of the affordable units, the affordable housing will be paid for by the landowner - through land prices that appreciate at a slower clip than they would have without an inclusionary requirement. <ix> Given that inclusionary housing programs are typically created in affluent, strong markets where land appreciation has risen and continues to rise at a very healthy clip, this is not an unwanted or necessarily unfair result. In these kinds of markets, in the long run, cost offsets may serve primarily to subsidize high land costs.

However, in the short run, the lack of cost offsets has the potential for imposing significant costs on individual parties (for example, on developers who already own land) until the market adjusts; and for this reason, cost offsets provide an attractive option for many local communities. By helping to prevent severe cost impacts in the short run to any one party, cost offsets can often help to make an inclusionary housing program more politically palatable. Cost offsets can help to lay the foundation for long-term buy-in and success, especially from the developers that will be regulated by the ordinance and who will be producing the affordable housing under the ordinance. The offsets present and granted in most programs nationwide probably do not account for 100% of the cost associated with the affordable units, but their presence can help to ensure that no one party bears the entire burden of "paying for" the affordable housing.

In California alone, the state with maybe the most "formal" inclusionary housing programs, a 2003 study of 107 California programs (which does not include every program in the state) showed that most programs did in fact contain some sort of cost offset. The list below shows what kinds of offsets were most often included in local programs:

Table 3.1: Cost Offsets Found in Survey of 107 Local Programs in California

Cost Offset	% of Programs Surveyed
Density Bonus	92%
Expedited Permitting/Approval	44%
Relaxed Design Standards	42%
Fee Waiver	42%
Subsidies for the Affordable Units	38%
Fee Reduction	35%
Fee Deferral	19%
Growth Control Exemption	13%
Tax Abatement	4%

Source: California Coalition for Rural Housing (CCRA) and Non-Profit Housing Association of Northern California (NPH). 2003. Inclusionary Housing in California: 30 Years of Innovation. San Francisco, CA: CCRH and NPH.

This analysis did not show how often these offsets were actually granted or used. It is important to note that the presence of an offset in an ordinance or in program regulations does not mean that it is necessarily used often or at all.

A. Types of Cost Offsets

Nationwide, there are many approaches and many paths to success. Table 3.2 below provides a preview of this next section - listing the types of cost offsets that will be reviewed, examples of that type of offset, and a representative community or two that uses this kind of offset. Exhibit B to the report provides a detailed listing of the costs offsets provided by a representative sampling of programs from around the country.

Table 3.2: Types of Cost Offsets

Type of Offset	Example	Communities
No Offsets	N/A	Boston
Density Bonus	Sliding Scale of 10-20%	Fairfax County, Virginia
Zoning/Design Flexibility	Height Bonus of 10 Feet	Santa Monica, California
Parking Reductions	50% Reduction for Affordable Units	Brookline, Massachusetts
Property Use/Housing Type Flexibility	Ability to mix townhomes and duplexes with single-family detached	Montgomery County, Maryland
Fee Waivers/Reimbursements/ Reductions	$ 5,500 fee reimbursement per affordable unit built Rises to $ 10,000 per unit for units below 65% AMI	Denver
Reduced Finishes/Unit Sizes for Affordable Units	Allowed but affordable units must meet minimum size guidelines and reduced finishes cannot affect energy efficiency	Highland Park, Illinois
Alternative Materials	Hardy Board Instead of	Brookline allows

Type of Offset	Example	Communities
	All Brick Construction	alternative materials (not specifically the example cited here) but developer must apply for approval
Expedited Review/Approval	Priority Status for Permitting and Approvals	Sacramento, California Tallahassee, Florida
Tax Break	Waiver of housing excise tax for the permanently affordable units	Boulder, Colorado
Other Creative Approaches	Marketing Assistance	Chicago, Illinois Longmont, Colorado
Local, State, or Federal Subsidy	Use of Tax-exempt bonds and 4% credits	New York City

No Offsets

Some programs provide very little or nothing in the way of cost offsets or developer incentives. Boston, Massachusetts; Boulder, Colorado; Carlsbad, California; Chapel Hill, North Carolina; Davidson, North Carolina; Newton, Massachusetts; San Diego's Future Urbanizing Area program (FUA); and San Francisco, California all fit this bill. Some programs include a large number of possible cost offsets in their ordinance but rarely grant many of these offsets.

In other communities, such as Denver and Longmont, Colorado, the program provides fee reimbursements for all developments under the ordinance that include the required 10% (which is not a large cost offset), but only provides additional cost offsets once a developer sets aside more affordable housing than the baseline requirement. Unless the development includes more affordable housing than the minimum, few offsets are available.

Density Bonuses

Many programs allow the development covered by the inclusionary housing ordinance to include more units than would normally be allowed under the base zoning. For example, a program might allow a development to build one additional market-rate unit for each affordable unit required by the inclusionary housing program (as in Highland Park, Illinois). Or, the program might allow 30% more units to be included in the development than would otherwise be allowed under the base zoning (as in Cambridge, MA).

Not all density bonus provisions are the same of course. Some are based on a sliding scale commensurate with the

percentage of affordable housing that is provided- as in Montgomery County, Maryland, where a development can enjoy a density bonus of seventeen percent (17%) to twenty-two percent (22%) when including twelve and sixth-tenths percent (12.6%) to fifteen percent (15%) affordable housing or in Fairfax County, Virginia - where a development can enjoy up to a twenty percent (20%) density bonus when including twelve and one-half (12.5%) affordable housing or under the State of California's, state-mandated density bonus, which provides a bonus of up to thirty-five percent (35%) of the underlying density, based upon the percentage amount and affordability levels of the affordable units provided.

Some bonuses are flat - as in Cambridge, Massachusetts, New York City (which offers a 33% density bonus), Santa Fe, New Mexico (which provides a 15% density bonus), or Tallahassee, Florida (which provides a 25% density bonus). Some bonuses are tailored to fit specific zoning districts, as in Stamford, Connecticut, where the allowable bonuses can range from 22% to 38%, depending on the multi-family housing district in which the development is located. However, in Stamford, the bonus must be approved by the Zoning Board of Appeals and some portion of the bonus must be dedicated to affordable housing units (more on this below). The density bonus in Madison, WI is similarly adjusted based upon the zoning district in which the development is located.

And of course, some are more generous (e.g. larger) than others. For example, in Santa Monica, a developer can *potentially* obtain up to a fifty percent (50%) density bonus (including both the state and local density bonuses offered), which is much larger than the nine percent (9%) bonus in Brentwood or the ten percent (10%) bonus in Denver.

Some programs do not require any of the "bonus units" to be affordable, such as Brentwood, Cambridge, Highland Park, Montgomery County, Fairfax County, Tallahassee, or the State of California's density bonus law. So, for example, in Montgomery County, if you include 15% affordable housing in a 100 unit subdivision, you will receive a 22% density bonus, which will allow you to build 22 additional market-rate units. As a result of the bonus, the developer receives approval to build a 122 unit subdivision where 15 of the units are affordable and 107 are market-rate. Even though none of the bonus units need to be affordable in Montgomery County, a developer cannot receive a density bonus until the development includes **more than** 12.5% affordable housing (which is the minimum baseline affordable requirement).

Other programs - including but not limited to Davis, California; Stamford, Connecticut; New York City, and the Chapter 40B program in Massachusetts - all require that some percentage of the "bonus units" to be affordable as well. In Stamford, anywhere from 1/5 to 1/4 of the density bonus units that are granted must be dedicated to affordable housing (in addition to the baseline 10% affordable requirement under the ordinance). In Davis, California and in New York City, the calculation of the affordable percentage incorporates the density bonus units, thereby including them in the percentage required. So, for example, in New York City, the development receives a 33% density bonus, but 20% of the *total units* in the development must be affordable under the program. Similarly, under the 40B program in Massachusetts, the developer may receive an increase in density and other kinds of zoning relief, but 25% of the *total units* in the development must be affordable.

Some density bonuses are fairly standardized, while others are tailored to a specific project. Some are granted "as of right", while others are negotiated on a case by case basis. In reality, even most of the standardized bonuses that are listed "as of right" in ordinances often require some level of negotiation and approval from the local jurisdiction (such as the submittal of an inclusionary housing plan which must be approved by the local government).

Montgomery County, Maryland and Fairfax County, Virginia have standardized, sliding scale density bonuses and these bonuses are "as of right." Cambridge, Massachusetts (30% bonus); Chicago's downtown density bonus program; Davis, California (one for one); Highland Park (one for one); Madison, WI (standardized according to different zoning districts); New York City (33% bonus); and Tallahassee, Florida (25% bonus) also all have standardized density bonus provisions that are "as of right". This kind of approach provides developers with predictability and protection - predictability because developers can incorporate the value of the density bonus into their pro-formas as they evaluate the feasibility of a site and protection because, in the short run, if the developer is the existing owner (and is therefore

unable to negotiate for a lower acquisition price for the property), this bonus helps to defray the cost of the affordable housing requirement. In all of these situations, it is important to remember that there is still some interaction and negotiation with local planning staff over how the development comes together.

Other density bonuses are standardized, but not as of right - some sort of showing must be made for developers to receive the density bonus. For example, in Brentwood, California, the density bonus is 9% above the midpoint density of the density range established in the general plan and zoning code. But, in order to obtain this density bonus, the developer must apply for it and show that the bonus is necessary to the financial feasibility of the development. The state-mandated density bonus in California provides another example - it mandates a sliding-scale percentage bonus to a development depending on how much affordable housing (at which income levels) is included in the development. However, even though this provision in state law is technically "as of right", developers still must often negotiate and press very hard in order to secure this bonus from local communities that are inclined to limit density.

Still other bonuses are as "of right," but not standardized - they are somewhat tailored to each development or to different districts. Stamford, Connecticut provides one example as previously described and Chicago provides another. In Chicago, the Affordable Requirements Ordinance (ARO) requires any development that receives an increase in residential density to set aside ten percent (10%) of the housing units as affordable. This ordinance effectively operates as a density bonus provision tied to an affordable housing requirement, but the developer must negotiate for the appropriate density increase, taking into account the fact that ten percent (10%) of the total units in the development will need to be affordable.

Finally, density bonuses can be negotiated and tailored to each individual development. Again in Chicago, under the Chicago Partnerships for Affordable Neighborhoods (CPAN) program, developers can negotiate with the local alderman and city for a density bonus or zoning change. In a CPAN development, the alderman and city will require at least ten percent (10%) affordable housing but whether a density bonus will be granted is a matter of development-specific negotiations. There is no zoning bonus or density bonus "as of right" and there is no standardized density bonus or zoning bonus that one receives. Similarly, in Carlsbad, California, developers may also apply for a density bonus or other cost offsets; these requests are negotiated on a case by case basis. According to local planning staff, the city generally views the affordable housing requirement as a "cost of doing business" - so developers must make a convincing case in order to receive a density bonus.

Many communities do not offer density bonuses at all - for example: Boulder, Colorado; Brookline, Massachusetts; Longmont, Colorado; and Newton, Massachusetts. Some communities in California, like San Diego, San Francisco, and Sacramento, only offer the possibility of obtaining the state-mandated density bonus. And even then, very often, the bonus is not requested or used in these communities because of local resistance.

Standardized and "as of right" bonuses provide more predictability for all parties and more protection to developers; negotiated and discretionary bonuses allow more tailoring and flexibility. Both approaches can work and both address legitimate and competing interests between developers and local governments.

Zoning/Design Flexibility

Many programs provide a development with the ability to make adjustments in the zoning code that relate to the height, bulk, use, or design of the development. In some cases, these adjustments enable a developer to build more units or develop more floor area on a site. In fact, they are often necessary in order to make a density bonus provision effective or realizable (e.g. a development may need an additional floor of height or may need reduced lot sizes in order to add 20% more housing units to the development). In other cases, these adjustments provide relief in their own right that help to make a development more financially feasible.

Zoning/design flexibility can include, but is not limited to, the following kinds of relief: reduced setbacks, reduced

minimum lot size requirements and reduced buffering requirements; increased height allowances; increased floor area ratios (FARs); reduced street widths; reduced landscaping requirements; reduced green space requirements; and reduced curb and gutter requirements.

Examples of programs using zoning/design flexibility include Brentwood, CA; Brookline, MA; Cambridge; Chicago's CPAN program; Davis, CA; Highland Park, IL; Irvine, CA; Longmont, CO (only if additional affordable housing beyond the baseline requirements are provided); Madison, WI; San Diego's citywide program; Sacramento, CA; Santa Fe, New Mexico; Santa Monica, CA; Stamford, CT; the State of California's Density Bonus law; and Tallahassee, FL.

Irvine, California offers reduced park-land set-aside requirements, which provides a very useful offset to developers. Santa Monica, California allows for a possible height bonus of 10 feet in non-residential districts. Sacramento, California provides flexibility on road widths and curbs and gutters; Cambridge, Massachusetts provides: a) increased FAR for the affordable units; b) decreased minimum lot area requirements (such that two additional dwelling units per lot are permitted for each additional affordable unit); and c) no variance is required to construct affordable units; and Tallahassee allows reduced setback and buffering requirements within a development covered by their ordinance.

These offsets most often involve some level of negotiation and tailoring to each particular project. In fact, most programs list these kinds of offsets very generally, thereby allowing the local government staff and council to work with a developer and the community to determine the specifics for each individual project.

Parking Reductions

Parking requirements often represent a very significant cost of development. In locations where transit options are more plentiful and where densities are higher, parking reductions make good planning sense for many reasons. In some cases, households buying or renting affordable units will own fewer cars than market-rate owners or renters. As a result, many programs include a parking reduction in their programs as a way to decrease the cost of creating an affordable unit and as a way to further other local planning goals related to density, walk-ability, air quality, and economic development.

Examples of programs with parking reductions include Brentwood, California; Brookline, Massachusetts (50% parking reduction for affordable units - only 1 unit instead of the standard two units); Davis, California; Denver (reduction of 10 parking spaces for each affordable unit above 10% affordable housing); Fairfax County, VA (parking reductions for mid-rise elevator buildings that contain affordable housing); Irvine, CA; Madison, WI; Sacramento, California; San Diego, California (must be negotiated on a case by case basis); Santa Monica, California; and the State of California Density Bonus law.

Of course, parking reductions (like increased density) are not always popular or are not appropriate in every situation. As a result, in many communities, they are discretionary and available only upon application (Brentwood, California; Davis, California; or San Diego) or only available when the developer takes additional steps beyond the baseline requirements of the ordinance (as in Longmont and Denver).

Property Use/Housing Type Flexibility

In many communities, zoning codes and districts often do not allow developments to mix housing types - such as single-family detached housing with duplexes, townhomes, and condominiums. But the ability to mix these housing types in the same development can make the inclusion of affordable housing more financially feasible.

For example, in Montgomery County, Maryland and in Fairfax County, Virginia, developers have successfully included affordable town-homes in luxury, single-family subdivisions by including two, three, or four townhomes within a building structure that is identical to the large, single-family home sitting next door. See the pictures below for examples.

Montgomery County, Maryland
Affordable Town Homes

Montgomery County, Maryland
Market Rate Single-Family Home

Click here for image

Fairfax County, Virginia
Affordable Town Homes

Fairfax County, Virginia
Market Rate Single-Family Home

Click here for image

Housing type flexibility can also include creative approaches such as "stacking town homes." In many market-rate town home developments, the square footage size of a single, market-rate town home can be quite large and can cover three or four floors. This often makes it possible to "stack" two affordable town homes within the footprint of what would otherwise be a single market-rate town home.

Other programs, such as Brentwood, California; Irvine, California; Tallahassee, Florida; Madison, Wisconsin; Sacramento, California; and the State of California's Density Bonus Law utilize similar provisions. Examples of this

kind of flexibility can also be found in a number of locations in New Jersey.

Fee Waivers/Reimbursements/Reductions

Many programs waive fees, provide per-unit cash subsidies to developers to essentially "reimburse" them for fees paid, or allow fees to be deferred until units are sold or rented. While not providing the same level of financial boost to project viability as a density bonus, a well-designed fee waiver or fee reimbursement provision can add significant value to an inclusionary housing program. Some programs provide waiver fees or reimbursements on all the residential units; more often, programs provide the waivers or reimbursements on only the affordable units.

In Colorado, political disagreements as well as legal ambiguity over whether local governments can "waive fees" have led communities like Longmont and Denver to provide a per unit cash subsidy for the affordable units that provides the developer with the cash value of having a number of local fees waived on the affordable units. In both programs, the cash subsidy represents the only cost-offset available to developers unless the development includes more than 10% affordable housing.

Other communities increase the value of the fee reduction or subsidy as the affordability level of the affordable unit increases - the more affordable the unit, the higher the fee waiver for that unit. In Sacramento, California, developers can receive a $ 4,000 fee reduction subsidy for units made affordable to households at or below 50% of the AMI and a $ 1,000 fee reduction subsidy for units made affordable to households at or below 80% of the AMI.

Other communities that use fee waivers/reimbursements/deferrals include: Brentwood, California; Highland Park, Illinois; Irvine, California, Montgomery County, Maryland (for rental developments only), Madison, Wisconsin (also structured as a cash subsidy); San Diego, California; and San Francisco, California.

Reduced Interior Finishes/Reduced Unit Size

Another way to reduce costs within inclusionary housing developments is to allow the use of more affordable finishes in the affordable units and to allow the affordable units to be smaller in square footage than market-rate units with the same number of bedrooms.

Brentwood, CA; Brookline, MA; Chicago, IL; Highland Park, IL (finishes and unit size); Montgomery County, MD; and Sacramento, CA, among others, use this cost offset in their programs. However, for most communities, reducing cost on the affordable units in this regard does not mean sacrificing quality, sound building, energy efficiency, or ensuring sufficient room for affordable renters or homebuyers.

Thus, many programs draft their ordinances or program regulations in a manner that provides minimum unit sizes for the affordable units and that positively state which materials, appliances, or finishes must be the same between the market-rate and affordable units. For example, many ordinances require that: a) the bedroom mix of the affordable units be in equal proportion to the bedroom mix of the market-rate units; b) that the differences between the affordable units and the market-rate units not include improvements related to areas like energy efficiency (such as mechanical equipment and plumbing, insulation, windows, and heating and cooling systems); and c) that the gross floor area for the affordable units be: i) no lower than minimum square footage requirements set by the city for different bedroom size units; or ii) no less than some % of the gross floor area of the market-rate units (e.g. 75%).

Alternative Materials

Another option for a local jurisdiction is to allow the use of alternative materials in the construction of a development that includes affordable housing. For example, if a community typically requires 100% brick construction, a local government could allow the use of siding or hardy board in place of brick if the development includes affordable

housing.

Brookline, Massachusetts allows the use of alternative materials but since the community places a premium on high-quality construction, the developer must apply for this option and must receive specific town approval.

Expedited Review/Approval Processes.

Time is money. Development approval processes can be notoriously long, difficult, and expensive. Many programs attempt to provide developments with cost-savings by giving inclusionary developments greater priority in the approval process. Whether these cost-savings materialize depends almost entirely on the efficacy of local implementation and administration.

Many programs offer expedited review/approval processes. These programs include: Brentwood, California; Chapel Hill, NC; Davis, CA; Denver, CO; Irvine, CA; Madison, WI; Montgomery County, MD; Sacramento, CA; San Diego, CA; and Tallahassee, FL.

It's very hard to know which programs do this effectively without a much more detailed, focused and in-depth study. For example, in Chapel Hill, North Carolina, an expedited approval process is the only cost offset listed in their program documentation. However, according to city staff in Chapel Hill, this offset is never used in practice.

However, the Chapter 40B program in Massachusetts provides a good example of how an "expedited approval/review process" can make a significant difference. In Massachusetts, zoning changes at the local level require approval through the "town meeting" process, which can be long, exhausting and quite difficult. The 40B law provides developments that include twenty-five percent (25%) affordable housing with a comprehensive permitting process that allows them to by-pass "town meeting" and to consolidate many of the numerous local boards in the approval process. The 30 plus years of success under the 40B program testifies to the value of this component. Furthermore, a recently-completed study in California indicates that a number of California communities have had some success with expedited permit processes. <x>

In Longmont, Colorado, developers who provide more than the baseline affordability requirement of 10% under the ordinance can receive an expedited permit process which will cut the approval timeline by 50%.

This offset offers potential cost savings that can improve financial feasibility, but its value in any location depends solely upon local implementation.

Tax Abatement/Tax Break/Tax Waiver

Some programs provide developments with some sort of tax abatement, break, or waiver, in order to help defray costs.

In Boulder, Colorado, all residential and non-residential development must pay a "housing excise tax" in order to help fund affordable housing efforts in the city. The housing excise tax is a "per square footage" tax, which currently amounts to $ 0.47 per square foot for non-residential development and $ 0.22 per square foot for detached or attached residential dwelling units. This housing excise tax serves as a linkage fee or tax that is meant to defray the cost of creating the affordable housing that will be needed as a result of the new commercial and residential development. All permanently affordable units (restricted to stay affordable in perpetuity) are exempt from the tax. The tax must be paid on the market-rate units or any affordable units with restrictions that are not permanent restrictions.

Also in Boulder, all residential and nonresidential development must pay a "development excise tax," which is imposed in order to raise funds for the cost of future capital improvements. The development excise tax acts as a linkage fee or tax that is meant to defray the cost of the capital infrastructure needs that will be created by new commercial or

residential development. The current tax rates are as follows: $ 2.40 per square foot for nonresidential development; $ 5,401.35 per detached dwelling unit; and $ 3,477.25 per attached dwelling unit. If a development includes more than 20% affordable housing (the baseline requirement in the Boulder program) or makes the affordable units more affordable than required by the ordinance, then the development may receive a waiver for the development excise taxes as well.

In New York City, the 421A Property Tax program provides developers of residential housing meeting certain conditions to receive a 10-15 year tax exemption. For many years, beginning in the 1970s, this program played a very important role in helping to attract new residential development and redevelopment to New York City. The program has undergone reforms since its creation in the 1970s - there are now "exclusion zones" where affordable housing must be included in the development for the property tax exemption to be secured. Efforts are currently underway to further reform and modernize 421A to limit its application only to developments that include at least 20% affordable housing. Under New York City's inclusionary housing approach, specified "upzonings" can receive an array of cost offsets (33% density bonus, state and federal subsidies, and the 421A property tax exemption) if they voluntarily include at least 20% affordable housing in the development. So long as 421a continues to exist in some form, buildings that choose to include 20% affordable housing under large, targeted "upzonings" will receive the 421a property tax exemption.

Finally, Highland Park, Illinois uses a demolition tax applicable to teardowns/demolitions of single-family and multi-family structures in order to generate revenues for its local affordable housing trust fund. In situations where the demolition tax would apply to a market-rate development covered by the inclusionary housing ordinance, this demolition tax is waived for the affordable units.

Other Creative Approaches

A number of other offsets have been used by communities based upon location-specific situations or creative identification of costs to be reduced. A few examples include:

Growth Limitations

A number of California communities - specifically Morgan Hill, California have experienced success using their growth limitation policies as a tool in promoting affordable housing. Morgan Hill, California issues a limited number of permits each year under its growth limitation policy. Developers that include affordable housing in their permit applications are given priority for receiving an allocation of the limited number of building permits. Morgan Hill's approach has allowed it to enjoy some success with a voluntary program - something not easy to do in a high-cost area.

Boulder, Colorado also provides an exemption from its Residential Growth Management System (RGMS) to developments that agree to include 35% or more, permanently affordable housing - the baseline requirements in their program only require 20% affordable housing. Though Boulder's program has enjoyed success overall, its offer of an exemption from the RGMS has not made a significant difference in enticing developers to do 35%, instead of just 20% affordable housing.

Transportation Concurrency Exemption

Tallahassee offers an exemption from its transportation concurrency requirements for the affordable units. Under the transportation concurrency requirements, a developer must show that there is sufficient capacity in local roads and infrastructure to support the new development. The Tallahassee ordinance allows the developer to remove the affordable units from this calculation/determination.

Marketing Assistance

The City of Chicago and Longmont, Colorado (among others) offer and provide marketing assistance for the affordable units to developers. Since some developers may not have experience dealing with the marketing of an affordable product, this can save the developer time and money and can also help to ensure that the local government's objective of matching these affordable homes to people in need is met. If the marketing assistance is effective, the developer reaps the benefit of units being absorbed or leased up more quickly, which means interest savings and financial benefit to the project.

Finally, some communities allow developers to come forward with proposals for other ways to reduce costs - essentially inviting developers to propose an additional "cost offset" not listed in the program specifications. Both Tallahassee and the State of California's density bonus offer this option.

Local, State, or Federal Financing

Many programs will not allow a development to use local, state or federal funds unless: 1) the development includes more affordable housing than the baseline requirement or 2) the development includes housing that is more affordable than the baseline requirement for affordability (e.g. 10% at 50% of the AMI instead of 10% at 65% of the AMI)

However, Sacramento, California does allow developers to use local, state and federal funds in the inclusionary housing program and provides inclusionary housing developers with priority for those funds. But, the use of these funds is limited to multi-family developments - usually rental. Davis, California also allows developers the option to meet their inclusionary housing requirements by using federal, state or local dollars (if they can secure them).

Finally, New York City allows developers to use tax-exempt bond volume cap and 4% tax credits to meet the 20% affordable housing component on large upzonings. These subsidies are in addition to the 33% density bonus (provided over and above the upzoning that has already occurred) and the property tax exemption provided by the 421A program. New York City's approach reveals the true "cost" required to secure affordable units from developers under a purely voluntary approach.

B. No One Path to Success

There is no one path to success. Programs with and without cost offsets have enjoyed significant success in produce affordable homes and in generating fees to support affordable housing in other ways in the community.

Table 3.3: Success with Cost Offsets

Community	Threshold	% Requirement	Density Bonus	Other Incentives	Units Built or Approved/Fees Collected or Committed
Montgomery County, MD (1974)	20 units	12.5-15%	0-22%	Yes	Over 12,000 units

Community	Threshold	% Requirement	Density Bonus	Other Incentives	Units Built or Approved/Fees Collected or Committed
Fairfax County, VA (1991)	50 units	5-12.5%	10-20%	Yes	1800 units
Cambridge, Mass. (1999 - passed mandatory program)	10 units	15%	30%	Yes	450 constructed - many more planned
Davis, CA (passed 1990)	5 units	25-35%	One for One Up to 35% by State Law	Yes	1800 units
Irvine, CA (2003)	All residential	15%	Up to 35% by state law	Yes	921 units $ 12.5 million
New York, NY (2005) (2005)	N/A - large targeted "upzonings"	20%	33%	Yes	A couple hundred constructed; 7,000 anticipated in next decade
Sacramento, CA (2000)	10 units - in new development areas	15%	Up to 35% by state law	Yes	2,999 units

Community	Threshold	% Requirement	Density Bonus	Other Incentives	Units Built or Approved/Fees Collected or Committed

Some programs succeed by providing a significant array of cost offsets and these offsets are "as of right" and standardized. Montgomery County, Maryland and Fairfax County, Virginia provide a fairly simple package of offsets. The most important offset that they provide - the density bonus - is "as of right" and fairly standardized. Both programs have enjoyed tremendous success. Montgomery County is regularly recognized as the nation's "poster child" for inclusionary housing - having created over 12,000 affordable units (over 1,000 of which have been purchased by the local housing authority to serve households below 30% of the AMI) in market-rate subdivisions across one of the nation's most affluent counties. The program has attracted over $ 500 million in private investment into affordable homes, has improved (not decreased) property values, and has helped to create a more diverse and vibrant county. <xi>

Some programs provide a significant list of offsets but these offsets are not as of right and they are not standardized - they must be negotiated and tailored to each program. In some of these programs, developers actually receive a fair amount of these offsets; in others, towns drive a harder bargain. Sacramento does not typically grant a parking reduction and only offers a density bonus to those developers who apply for the state-mandated density bonus provision. However, the city does offer an attractive array of other offsets to developers (fee waivers, subsidy loans/cash subsidies, expedited permitting, relaxed zoning and design standards, ability to mix housing types, etc.) and invites developers to apply for these offsets. Sacramento's numbers adequately tell the story; since 2000, the city has created almost 3000 affordable units (constructed or planned) with its program.

Whether as of right and standardized or negotiated and tailored, the inclusion of cost offsets and incentives can help to ensure a successful program. A recent report in California, which provides the most comprehensive review of inclusionary housing programs in California to date, asserts that the most successful programs in the state provide developers with a range of incentives. <xii>

However, programs can also succeed while providing little or nothing in the way of cost offsets. The affordable housing requirement is treated as a cost of doing business in the community - just like any another provision in the zoning code. Table 3.4 below shows that these kinds of programs can succeed as well.

Table 3.4: Success without Cost Offsets

Community	Threshold	% Requirement	Density	Other Incentives	Units Built or Approved/ Fees Collected or Committed
Boston, MA (2000)	10 units	15%	No	No	893 Units $ 13.3 million
Chapel Hill, NC (2000)	5 units	15%	No	Expedited Approval- Never Used	288 units $ 1,32,000
San Francisco, CA (2003, amended '06)	10 units	15%	No	Fee Waivers	1593 Units Built 250-350 planned per year for next couple years $ 67 million
Longmont, CO (1995, amended '01)	Any size for annexations; 5 units elsewhere	10%	None for baseline 10%	Fee Waivers	1270 Units (from construction and fee in lieu funds) $ 4,002,126

Community	Threshold	% Requirement	Density	Other Incentives	Units Built or Approved/ Fees Collected or Committed
Boulder, CO (2000)	All residential	20%	No	Waiver of housing excise tax for permanent affordable units	450 units $ 1.5 million
Davidson, NC (2001)	All development except conservation easement subdivisions	12.5%	None	None	265 units $ 500,000
Carlsbad, CA (1993)	7 units	12.5%	Can apply	Can apply	1600 units

The numbers speak for themselves - Boston and San Francisco's production figures (both in terms of units produced and fees collected) are impressive. Similarly, Chapel Hill and Boulder, for relatively modest-sized cities, have generated quite a bit of production since passage of their programs; their programs are significantly supplementing the supply of affordable housing that would otherwise be available in their communities. And all of these communities are adding affordable housing supply that would otherwise not be there without using their federal, state, or local housing dollars. They are harnessing the power of their expensive housing markets to help create these much-needed affordable homes. These cities have continued to see significant market-rate activity on the heels of passing their programs.

Programs without cost offsets can succeed for a number of reasons. Large urban centers like Boston and San Francisco benefit from their unique location and strong real estate markets. Developers want to be in both locations because people and businesses want and/or need to be there. The strong land values and housing demand help to make a program without cost-offsets feasible - for example, there's room to absorb reductions in highly-appreciated land costs.

They also benefit from the fact that many other communities around them utilize some form of inclusionary zoning. This reality helps to reinforce their policies as a standard part of the marketplace. As a result, inclusionary housing is much less likely to act as a competitive disadvantage that encourages developers to "take their business elsewhere."

Affluent university towns like Chapel Hill, North Carolina and Boulder, Colorado do not have a statewide regulatory framework pushing them or their neighbors to implement inclusionary housing. To the contrary, Colorado and North Carolina state law present obstacles to the creation of local inclusionary housing programs. However, Chapel Hill and Boulder are extremely popular locations that provide a high quality of life - as a result, developers want to develop there. Communities like Longmont, Colorado and Davidson, North Carolina are in a similar position. As a result of their desirability, these locations enjoy a bit of monopoly power; they can impose additional requirements on development up to a point because they know that the development community will still want to develop there.

The experience of these communities indicate that communities enjoy a measure of "monopoly power" and have more ability to impose an affordable housing requirement without providing an explicit or additional "cost offset" when all or some of the following factors are at play,

a) where housing markets are strong;

b) where communities are viewed as highly desirable locations for people, business, culture, etc.; and

c) where there is a statewide regulatory framework pushing inclusionary housing approaches or a market-practice in the surrounding area that incorporates inclusionary housing into the market in that area.

Inclusionary housing approaches are very place-specific - driven by local goals, local markets, the presence or absence of a statewide regulatory framework, and of course, local politics. As a result, programs with and without cost offsets can succeed. Success is determined not by their presence or absence, but rather by understanding the relevant market and political factors involved and then designing the *appropriate* offsets. If offsets are used, it is more important to have a *well-designed* list of the *appropriate and effective* offsets rather than a *long* list of *potential* offsets that do not fit the local context. Note that Montgomery County does not have a long list of offsets - it has a short list of benefits that best fit its local market and local politics. This is not to say that a long list of offsets is always bad; to the contrary, a long list of well-designed offsets can help to create a program that has the flexibility to succeed for different types of development. But success is not determined by *how many* offsets a program has but rather *how many meaningful and useful* offsets a program has. Communities that succeed take the time to figure out what works and then adjust the program as they implement it.

C. Implications for New Jersey

The national experience and the review of specific programs from around the country indicate that programs with and without explicit cost offsets can succeed. So, where does that leave New Jersey in its efforts to craft new third round rules?

To help shed some light on this question, let's first return to the experience of a nearby neighbor - Massachusetts. Like New Jersey, Massachusetts faces high housing costs, limited amounts of vacant and developable land, a plethora of local communities, and a mixture of urban, suburban, and rural areas. Also, similar to New Jersey, Massachusetts has a statewide regulatory framework under Chapter 40B. However, the scope of the statewide regulatory framework in Massachusetts is slightly more limited in scope that in New Jersey. In Massachusetts, only towns with less than 10% affordable housing are subject to possible "builder's remedy" appeals to the Housing Appeals Committee, while in New Jersey the constitutional requirement to zone for affordable housing applies to every community. Nevertheless, the experience of communities in Massachusetts with Chapter 40B and with local inclusionary housing ordinances can inform efforts in New Jersey.

Chapter 40B itself clearly indicates the power of density bonuses - it is most often a density bonus negotiated by the developer with the town that subsidizes the cost of the 25% affordable housing (for households at or below 80% AMI) in the private development. This approach, as mentioned earlier, can boast an impressive record of production - now over 54,000 housing units have been built or approved under Chapter 40B, with over 50% of those units reserved for and affordable to household at or below 80% of the AMI. <xiii> Chapter 40B represents a large and growing share of all the affordable housing production in the state and is now responsible for well over 70% of the affordable housing production in the metro region outside of Boston. <xiv> It also accounts for much of the market-rate production and is creating some of the most affordable market-rate housing in the state. <xv> For all these reasons, it is a testament to the power of density coupled with an affordability requirement, to stimulate both market-rate and affordable housing production.

However, the Chapter 40B experience does not suggest or prove that massive or large density levels are needed in order to stimulate production or create affordable housing. Nearly 2/3 of the homeownership developments built under 40B (at least 25% affordable) were built at densities of 5 units per acre or less. 83% were built at less than 8 units per acre. Of the 140 homeownership developments, densities ranged from .7 units per acre to 25 units per acre, with the highest densities in the cities. In rental developments, densities ranged from 4-50 units per acre, with 50% of all rental developments built at between 10-19 units per acre. <xvi>

Furthermore, the Chapter 40B experience does not stand for the argument that local inclusionary housing ordinances always need cost offsets in order to work. Without a doubt, the production from Chapter 40B in Massachusetts is unrivaled by any other affordable housing initiative utilized in the state (including any federal or state housing subsidy programs and including local inclusionary housing programs), thereby demonstrating the usefulness of density as a production tool. However, the production from local inclusionary housing programs is growing and significant nonetheless. As stated earlier, many communities in Massachusetts have adopted local inclusionary housing provisions of one kind or another (at least 118 as of 2002). Towns like Lexington, Bedford, Andover, Cambridge, Burlington, Danvers, and Woburn have used affordable housing requirements or incentives to add a significant number of new affordable housing units to their local inventories. Similar to the national scene, some of these programs include cost offsets and some do not.

The Massachusetts experience indicates that density bonuses provided under a statewide regulatory framework can be a powerful tool for creating affordable housing as part of market-rate developments in high-cost areas. However, this experience also indicates that the underlying density levels can be rather modest in most cases. Furthermore, the experience also demonstrates that local inclusionary housing programs can be successful at creating affordable homes and apartments as well, with or without density bonuses.

In New Jersey, for almost two decades, under the statewide regulatory framework created by the Fair Housing Act and administered by COAH, hundreds of towns used "de facto" inclusionary housing programs to create thousands of affordable units (1/2 of the affordable units had to be affordable to households at or below 50% of the AMI and 1/2 had to be affordable to households at or below 80% of the AMI). Under this approach, towns provided developers on "inclusionary sites" with the minimum COAH-prescribed, "presumptive density" of six units per acre, with a 20% affordability component (See NJ Reg. 5:93-5.6b). In order to allow the inclusion of single-family detached homes in some of these developments, COAH allowed presumptive densities of four, five, or six units per acre with an affordable housing component of 15%, 17.5% or 20% affordable housing, respectively, to be used in some communities. In some parts of the state and for some types of development, presumptive densities above 6 units per acre were provided (See NJ Reg. 5:93-5.6c). Towns often allowed developments to mix housing types (e.g. townhomes and single-family detached homes, etc.) and in some communities and in some situations, additional benefits were provided to developers (e.g. setback relief, possible parking reductions, etc.). The kinds of cost offsets listed in this section of this report should be familiar to developers and towns in New Jersey because they have implicitly been part of the New Jersey experience for the past two decades.

Many towns successfully created inclusionary developments under this framework and/or collected "fees in lieu of" construction of affordable units, both of which contributed to helping towns meet their Fair Share Obligations under state law. For example, Lawrence, New Jersey, used inclusionary development sites to help create 729 new construction units (with 86 more zoned/approved) between 1987 and 2003. <xvii> They also collected $ 5,786,271.81 in development fees and fee in lieu payments.

South Brunswick used inclusionary housing sites from 1987 to 2003 to help create 625 units of housing (with another 130 approved/zoned for affordable housing) and collected $ 6,147,392.28 in developer fees. <xviii> Meanwhile, Raritan created 194 units and collected $ 2,486,351.67, using some of these funds to then help create affordable housing in Raritan. <xix> Raritan has generally not provided developers with any costs-offsets beyond "presumptive densities." They have worked with developers to make developments more feasible by providing design waivers - on one deal they waived the parking requirement for the affordable units.

New Jersey enjoyed two decades of successful inclusionary housing programs - constructing over 36,000 units of affordable housing (at least 10,000 of these units were created by inclusionary housing approaches) and serving income levels lower than those served in Massachusetts under Chapter 40B and lower than most inclusionary housing programs nationwide. <xx> The New Jersey programs succeeded by providing presumptive density levels and, in some cases, by providing additional cost offsets, many of which have been described in this report. Given New Jersey's state regulatory framework, which is the most extensive of any state regulatory framework in the nation and which succeeded in making inclusionary housing policies a large part of the marketplace in New Jersey, it is not surprising that presumptive density levels worked well as a "cost offset" or "incentive" during the last two decades. The presumptive density levels prescribed by COAH in Round II are in the range of those used over the 30 plus year history of Chapter 40B; and Chapter 40B operates under a more limited, though still extensive and effective, statewide regulatory framework.

The national experience (including Massachusetts) confirms that approaches with and without cost offsets can work. But local context matters most. New Jersey has the most extensive statewide regulatory framework in the nation; it has strong, high-cost real estate markets in many locations; and most importantly, it has two decades worth of experience at providing cost offsets and incentives to developers through presumptive densities. COAH should draw upon these lessons as it crafts the Third Round Rules.

D. Best Practice: Reserving Local, State, and Federal Financing Subsidies and Enhanced Local Offsets for Projects Exceeding Baseline Affordability Requirements

A number of programs specifically state that no local, state, or federal subsidies can be used on a project covered by the local inclusionary housing program unless and until the project exceeds the percentage (%) of affordable housing required by the ordinance and/or the affordability levels for the affordable units exceed the baseline requirements in the ordinance. For example, Brentwood, San Diego, and San Francisco, California; Boston, Cambridge, and Newton, Massachusetts; Boulder, Denver, and Longmont, Colorado; Chicago and Highland Park, Illinois; and Madison, Wisconsin all explicitly operate this way.

As previously mentioned, some programs reserve a density bonus (usually the most lucrative offset) for those developments that exceed the baseline affordability requirements. For example, in Denver, Stamford, and even in Montgomery County, no density bonuses are granted unless and until more than the baseline affordable housing requirements (% and/or income level) are provided.

In Denver, the 10% density bonus, parking reduction, and expedited permit process are only available once a developer agrees to include more than 10% affordable housing (which is the underlying requirement). For every affordable unit provided above 10%, the development receives the right to build one additional market-rate unit and the development gets a reduction of ten parking spaces. If the development creates affordable units serving households below 60% of the

AMI (below the baseline requirement of 65% or 80% of the AMI), then the development also becomes eligible for higher per unit fee reimbursement payments (up to $ 10,000 per each affordable unit below 60% of the AMI up to 50% of the development - as opposed to only $ 5,500 for affordable units at or below 80% or 65% of the AMI).

In Stamford, 10% of a covered development must be affordable; if a developer chooses to access a density bonus, an additional portion of the bonus units must also be affordable (1/5 or 1/4, depending on the zoning district in which the development is located).

In Longmont, Colorado, a development can only receive the majority of the cost offsets available in the program if the development does more than the baseline requirements. If a developer includes 10% affordable housing, he or she may receive a Development Fee Reduction payment of 20-50% per affordable unit. In order for the development to be eligible for additional cost-offsets, the following higher standards must be met:

For Sale Units:	12% affordable below 70% AMI;
	15% affordable with 1/2 affordable below 70% AMI
	and 1/2 affordable below 80% AMI; or
	20% affordable below 80% AMI
Rental Units:	12% affordable below 40% AMI
	15% affordable with 1/2 affordable below 40% AMI
	and 1/2 affordable below 50% AMI; or
	20% affordable below 50% AMI

If the standards above are met, then the development becomes eligible for an expedited review, a density bonus, flexible zoning and development standards (lot size, setback, parking relief), additional fee waivers and fee deferrals, and marketing assistance.

In Boulder, Colorado, there is essentially only one cost-offset available to developments that meet the minimum requirement of 20% affordable housing - waiver of the housing excise tax on the ***permanently*** affordable units. The program's other possible cost offsets - waiver of the development excise tax (which applies to both affordable and market-rate units) and an exemption from Boulder's growth management requirements - only apply if more than 20% affordable housing is provided (35% affordable in the case of a waiver of the growth management requirements).

Boulder, Colorado has gone beyond mere policy tweaks - it has aggressively used its inclusionary ordinance to create developments that provide more than 20% affordable housing and where some portion of the affordable housing is affordable to households with incomes lower than those prescribed by their ordinance. Take for example the development known as the Holiday Neighborhood. Boulder Housing Partners, the local public housing agency, created this 27-acre development, which sits on an old drive-in movie theater site, using a combination of: a) land it acquired from the city; b) the city's inclusionary housing requirements; and c) traditional state and federal housing subsidies.

The result is a 333 unit residential development that includes small local businesses, a two-acre park, community gardens, and an extremely diverse mix of much-needed affordable housing in Boulder. BHP acquired parcels for the site from the city and then sold sites to developers who agreed to include 40% affordable housing in the development (20% affordable housing is required by Boulder's ordinance) and to comply with highly specific design requirements.

The development consists of 138 affordable units and 195 market-rate units. BHP purchased 49 of the affordable units

from developers at the affordable, for sale price under the inclusionary housing ordinance. These 49 rental units are owned by BHP - 29 are reserved for households at or below 40% of the AMI and 20 are reserved for households at or below 50% of the AMI. 3 of the rental units will serve households earning at or below 30% of AMI as Emergency Family Assistance Units and another 10 of the rental units will serve formerly homeless households with Section 8 and McKinney Homeless Assistance subsidies. The other 86 affordable units are affordable for-sale units sold to households at or below 60 or 80% of the AMI.

If this had been developed as a basic inclusionary housing project, it would have created about 66 affordable units, all of which would have been targeted at households earning somewhere between 60-80% of the AMI. Instead, this project includes 138 affordable homes and apartments (twice as much); 15% of the units serve households at or below 50, 40, or 30% of the AMI; the project provides a true mix of incomes and housing types; and the housing authority generated funds from the sales proceeds of the land to help finance additional development activities.

IV. Fee In Lieu

Good public policy usually requires some degree of flexibility and adaptability. It is impossible for any public body to anticipate every situation; in addition, it is foolish to assume that any policy can address the public problem it is attacking through one sole method alone. For these reasons, many local governments include a "fee in lieu" provision in their inclusionary housing program.

These provisions allow developers to pay a fee "in lieu of" building the affordable units on site in their otherwise market-rate development. As indicated above, this serves two purposes - flexibility and versatility. It allows for flexibility because where it is extremely difficult to build units on-site (due to the parcel shape, market conditions, size of the development, land costs, amenities in the development that impose high assessment costs on affordable homebuyers, etc.), this option provides another means of compliance. It allows for versatility because the local jurisdiction gains an additional resource to attack the affordable housing crisis.

Inclusionary housing ordinances often tend to produce affordable housing for populations earning at or above 60% of the AMI and in many cases, they exclusively serve populations with incomes higher than that. In addition, if "for sale" housing is the housing being developed by the private market, the inclusionary housing program will most likely only produce affordable "for sale" housing. If a city needs and wishes to address other aspects of the housing crisis (such as preservation, creation and subsidy of rental units, serving the working poor, etc.) then a fee in lieu provision, if properly structured, can come in quite handy. In an era where federal housing funds have been steadily declining in real terms for three decades and where state housing funds are far from sufficient to plug the gap, a fee in lieu provision can raise much needed revenue at the local level that can be used flexibly by the local government to serve the full spectrum of housing needs (homeownership, rental, rehab and preservation, rental subsidies to existing properties, seniors, efforts to end homelessness, efforts to create workforce housing, etc.) in a number of creative ways.

Most programs use some sort of fee-in-lieu provision. Looking again to the state with the greatest number of formal programs - California - a 2003 survey of programs there revealed that 81% of all programs utilize some sort of fee in lieu provision. <xxi> A recently released study in 2007 examining programs in California argues that the most successful programs provide developers with numerous "in lieu of" options for compliance, including fees in lieu. <xxii>

A. Calculating a Fee in Lieu Provision

Fee in Lieu Provisions can be calculated in many different ways and applied in a number of different ways. Listed below in Table 4.1 are seven fee-in-lieu methodology categories, an example of each, and a community where this example exists.

Table 4.1: Fee In Lieu Methodologies

Methodology	Example	Community
Subsidy Differential	Difference between the Price of a Market-Rate Unit and an Affordable Unit X Number of Affordable Units Required	Cambridge, Massachusetts
Replacement Value/FMV of Affordable Unit	Land + Hard Costs + Soft Costs = Replacement Value of Affordable Unit X Number of Affordable Units Required $15,692 (for sale, detached housing) $ 75,528 (for sale, attached housing) $ 61,562 (high density rental) $ 75,604 (low density rental)	Longmont, Colorado
Cost of Land	125% of the imputed cost of land X Number of Affordable Units Required	Montgomery County, Maryland
% Cost of Market-Rate Unit	10% of the Average Sale Price of the Market-Rate Units X Number of Affordable Units Required	Madison, Wisconsin
Tied to Price of Affordable Units	25% of AMI - Up to 240% of the median income of Stamford 50% of AMI - Up to 145% of the median income of Stamford 60% of AMI - Up to 110% of the median income of Stamford X the Number of Affordable Units	Stamford, Connecticut

	Required	
Linkage Fees	Affordable Housing Base Fee X Floor Area Base Fee = $ 28.15/sq. foot for ownership Base Fee = $24. 10/sq. foot for rental	Santa Monica, California

These seven methodological categories are explored "in-depth" below with examples form numerous locations around the country.

Subsidy Differential: Some measure of the difference between the price of a market rate unit and the price of an affordable unit

In many local governments, the fee in lieu is meant to provide the local government with sufficient funds to go somewhere else in the community and create an affordable home or apartment. After all, the purpose of the inclusionary housing program is to create affordable housing in the community. If the development in question is not going to produce that affordable unit, then the local government needs to receive a fee in lieu of that unit that is large enough to allow it to create an affordable unit elsewhere in the community. One way to accomplish this is to collect the amount needed to subsidize a market-rate unit so that it can be sold or rented at a price affordable to low or moderate-income households. This is known as a "subsidy differential" fee.

In order to meet this objective, many communities base their fee in lieu on some measure of the difference between the price of a market rate unit and the price of an affordable unit. Three basic options on this approach are listed below:

a) the actual difference between the market-rate price and the affordable price in that specific development (or some % of that);

b) a flat amount meant to provide some reasonable estimate of the cost difference between market-rate housing and affordable housing in the community; and

c) a square footage cost differential in the community.

This amount of money should be the amount that is necessary to essentially "write down" the cost of market-rate units elsewhere in the community to the affordable price. Of course, most communities end up setting their actual fee in lieu amount at a % of this initial calculation because the full difference between a market-rate unit and an affordable unit can be so large ($ 250,000 per affordable unit or more) that a developer would almost never choose this option. Since most communities want developers to pay the fee in at least some situations, the actual subsidy differential amount is reduced to something more reasonable.

The difference arrived at by these methods is then multiplied by the number of affordable units required in the covered development to obtain the "fee in lieu" amount for the development.

Estimating the Difference Between the Price of a Market Rate Unit and the Price of an Affordable Unit (or some % thereof)

Cambridge, Massachusetts sets its fee in lieu amount at the actual difference between the price of the market-rate unit and the price of the affordable unit, which makes the fee amount extremely large. Because the fee can only be paid in very limited situations upon approval by the City Council and because the fee is set so high, no developer has ever paid the fee in lieu in Cambridge. Cambridge would rather secure hard units so this fits with their policy objective.

In Boston, Massachusetts, the fee per affordable unit on a for-sale development is **the greater of**: a) 1/2 of the difference between the affordable and market-rate price OR b) $ 200,000. In rental developments, the fee in lieu is set at $ 200,000 per affordable unit, an amount meant to approximate the value of the difference between affordable and market-rate.

In Chapel Hill, the fee is the amount that is necessary to subsidize a market-rate unit in the development so that it is affordable to an eligible household under the program X the number of affordable units required. Chapel Hill has a policy, not a formal ordinance (though it is the process of writing one). As a result, in practice, the fee is quite often negotiated with the developer.

Flat Amount Estimating the Cost Differential (or a portion thereof)

Some communities develop a flat fee in lieu amount that is meant to "estimate" the amount needed to make up the difference between an affordable price and a market-rate price. See Table 4.2 below for details on some of these communities. Most of these communities complete an analysis to determine how much of the difference between a market-rate unit and an affordable unit should be used for the base amount of the fee in lieu.

For example, in Highland Park, the fee in lieu (which is currently $ 100,000 per affordable unit) is derived from the difference between the top market-rate price in the lower sixth of the local market (according to MLS listings) and the affordable price for a household of four at 80% of the AMI. If the median market-rate price had been used, the fee in lieu would have been $ 249,600 and if the top price in the lowest third had been used, it would have been $ 164,600. The $ 100,000 figure was deemed to be a much more feasible, realistic, and reasonable number - one large enough to encourage on-site development while also acting as a realistic figure to pay in certain situations. Under Highland Park's ordinance, the fee in lieu is only an "as of right" option for developers of single-family detached housing that are building fewer than 20 units.

Carlsbad, California chooses to only charge 15% of the subsidy amount necessary to write-down the cost of a market-rate unit to the affordable level (affordable price for household at 80% AMI), which makes the current fee-in-lieu payment a paltry $ 4,515 per affordable unit. Carlsbad is the extreme example here. However, Carlsbad only allows developments with 6 or fewer units to pay the fee, thereby reserving its use for small developments where it may be economically and spatially difficult to incorporate affordable units and also financially difficult to pay a large fee in lieu amount.

San Francisco adds a twist that the other communities in Table 4.2 below do not. San Francisco takes the base fee and then multiplies it by the percentage affordable housing required as if the builder were building "off site" (off-site development under the San Francisco ordinance requires that the developer build 1.5 times the amount of affordable housing required "on-site" - e.g. 20% off site instead of 15% on-site). This provides a strong incentive for on-site development, but if the developer chooses to pay, then the community will receive a very healthy fee in lieu payment - one significant enough to make some difference in a high-cost market like San Francisco.

Table 4.2 below provides a list of municipalities with "flat" fees in lieu.

Table 4.2: Flat Fee in Lieu Estimating Cost Differential Between Market and Affordable (or some % thereof)

Community	Fee in Lieu Amount
Carlsbad, California	$ 4,515 per unit
Chicago	$ 100,000 per unit
Highland Park, IL	$ 100,000 per unit
Brentwood, CA	$ 74,470 (units serving 120% of AMI or below) $ 182,393 (units serving 80% of AMI or below OR for units in developments with 5-9 units) $ 243,536 (units serving 50% of AMI or below)
Boulder, CO	$ 103,000 (Attached Unit) $ 121,000 (Detached Unit)
San Francisco, CA	$ 187,308 (Studio) $ 256,207 (1 BR) $ 343,256 (2BR) $ 384,562 (3BR)

Square Footage Cost Differential

Davidson, NC uses a Square Footage Cost Differential to make this estimate. See below

Fee In Lieu = [Median Price/Square Foot for Market-Rate Housing - Median Price/Square Foot for Affordable Housing] X Median Square Footage for an Affordable Unit

This amount is then of course multiplied by the number of affordable units required to arrive at the total fee in lieu amount for the development.

Replacement or FMV of the Affordable Unit: Estimating the Cost or Replacement Value of an Affordable Unit (or some % thereof)

Some communities don't use the "subsidy differential" between a market-rate and affordable unit as a guide in determining the amount necessary to create an affordable unit elsewhere in the community. Instead, these communities attempt to estimate the replacement cost or value of an affordable unit (or some % thereof). Essentially, the community

is saying, "If you're not going to build us an affordable unit, then we want a fee to cover the cost to construct an affordable unit."

Denver, Fairfax County, and Longmont, Colorado provide three pretty straightforward examples of this approach. Denver charges 1/2 of the affordable price for each affordable unit not constructed. Fairfax County charges the "fair market value" of the affordable unit.

Longmont, Colorado's fee represents the "replacement value of the affordable unit," defined as what it would cost to contract with a non-profit to build the affordable housing unit. Thus, the fee per affordable unit = Cost of Land + Hard Costs + Soft Costs. In Longmont, this analysis currently produces the following fee in lieu amounts:

$ 115,692 (for sale, detached housing)

$ 75,528 (for sale, attached housing)

$ 61,562 (high density rental)

$ 75,604 (low density rental)

Similar to Carlsbad, Davis, California is not interested in receiving a fee in lieu in most situations. But, in situations where they do prefer to receive a fee, they do not want to discourage market-rate development. As a result, the community of Davis bases their fee on **1/2 of the amount of subsidy needed to build an affordable housing unit on donated land**. Not only do they take the cost of land out of the equation, but they divide the result by two. The fee can only be used in developments located in the downtown core and even then, only on developments with fewer than 16 units. Davis did not want to deter redevelopment of its downtown core in any way and anticipated some feasibility issues with downtown development. The fee is $ 37,000 per affordable unit. For Davis, this approach makes sense. In most developments, they get units or land. In the downtown core, in developments of 16 or fewer units, they get fees.

Cost of Land

Other communities base their fee in lieu upon the cost of land. Montgomery County, MD bases its fee in lieu upon 125% of the imputed cost of land (with adjustments made for different types of development - e.g. high-rise development). Irvine, CA charges $ 12,471 per required affordable unit, which represents the fair market value of the cost of acquiring the requisite amount of land needed for the required affordable housing units, assuming that you can build at 25 units per acre.

Chicago's downtown density bonus program is a voluntary inclusionary housing program. It was created as part of the historic re-write of Chicago's zoning code and took effect in 2004. It is an attractive program because developers most often want to achieve more FAR in the downtown district than is allowed under the base zoning code established by the zoning rewrite. In order to achieve that additional FAR, developers must either: 1) dedicate 25% of the additional FAR to affordable housing; or 2) they must pay a fee in lieu.

The fee in lieu = [the Cost of land per square foot in the area of the downtown where the development is located X .85] X the additional Floor Area in square feet that is granted.

In essence, the developer is purchasing additional FAR and the value of that FAR is based on the cost of land in that area.

% Calculations of Price/Cost of Market-Rate Units

Brookline, Massachusetts; Newton, Massachusetts; and Madison, Wisconsin all base their fee in lieu payments upon a percentage of the price for the market-rate units.

Unlike most fee in lieu provisions, Newton charges 3% of the market-value on each market-rate unit - the base fee in not multiplied by the number of affordable units required. However, this only applies to developments of 6 or fewer units. Conversely, Madison, Wisconsin sets the fee in lieu at 10% of the average sale price of the market-rate units X the number of affordable units required.

Like Newton, Brookline charges a fee amount to each market-rate unit. If the developer makes this payment, no affordable units are required. The fee in lieu, which is called a "Trust Payment," is only available to developments of 15 or fewer units.

For ownership units, the Trust Payment = (Sales Price of the Market Rate Unit - $ 125,000) X the Contribution Factor. For rental units, the Trust Payment = [Market Value of the Development - (number of units X $ 125,000)] X Contribution Factor.

The Contribution Factor is as follows (for both ownership and rental): 6 units = 3%; 7 units = 3.75%; 8 units = 4.5%; 9 units = 5.25%; 10 units = 6.00%; 11units = 6.75%; 12 units = 7.50%; 13 units = 8.25%; 14 units = 9%; 15 units = 9.75%.

These fees do not even begin to approach the true cost of creating an affordable unit elsewhere in the community - especially in communities like Newton and Brookline. Instead, these fees serve as little more than modest revenue generators for local housing trust funds. However, they only apply to smaller developments in Newton and Brookline and the fee in lieu can only be paid in limited situations in Wisconsin, based upon city consent.

In Lieu Payments Tied to the Price of Market-Rate Units or Affordable Units

In at least two communities, the fee in lieu is tied in some way to the affordability level of the affordable units not being built or to the price of the market-rate units in the development.

In Tallahassee, Florida, the level of the fee in lieu directly correlates with the level of the prices of the market-rate units in the development - the higher the market-rate prices, the higher the fee in lieu amount. The rationale here is clear: if the developer is building more moderately-priced market-rate units, he should not pay as high a price for a fee in lieu. These moderately-price market-rate units (though not affordable to the households targeted by the ordinance) do less to exacerbate housing prices in the community than high-end luxury units and help to create more housing options in the local market for households of more modest means.

Here's how the fee works - if the average market-rate prices in the development are 110% of the Affordable Sales Price, then the fee in lieu will be $ 10,000 per affordable unit required. If the market -rate prices are 175% of the Affordable Price, then the fee in lieu will be $ 20,000 per affordable unit required. However, Planned Unit Developments (PUDs) and Developments of Regional Impact (DRIs), both of which are covered by the inclusionary requirements, cannot pay the fee in lieu - PUDs and DRIs are both developments of significant size. This will ensure that some of the largest developments include affordable units on site; however, for developments that are not PUDs or DRIs, the fee in lieu amounts will not provide the funds necessary to subsidize the creation of an affordable unit elsewhere in the community.

In Stamford, CT, the fee is gauged to the affordability of the affordable units that are not being built - the more affordable the unit required, the higher the fee in lieu required. The rationale here is well-founded: the town needs a higher fee in lieu amount to create an affordable unit to someone earning 50% of the AMI than it does to crate an affordable unit to someone 80% or 120% of the AMI. Notice also that the fee in Stamford is tied to the overall median

income. As documented above, Brentwood, California, which uses a "subsidy differential" approach, thereby also ties the fee in lieu amount to the level of affordability on the affordable units. See Table 4.3 on the next page for a summary of the Tallahassee and Stamford fee in lieu amounts.

Table 4.3

Tying a Fee in Lieu to the Price of Market-Rate Units or Affordable Units

Community	Fee in Lieu
Tallahassee	Based on Average Market-Rate Unit Price: --- 110% of the Affordable Sales Price = $ 10,000 per affordable unit required 110%-175% of the Affordable Sales Price = $ 15,000 per affordable unit required 175%-225% of the Affordable Sales Price = $ 20,000 per affordable unit required Over 225% of the Affordable Sales Price = $ 25,000 per affordable unit required
Stamford	25% of AMI - Up to 240% of the median income of Stamford 50% of AMI - Up to 145% of the median income of Stamford 60% of AMI - Up to 110% of the median income of Stamford

Linkage Fee Approaches

Some communities, in addition to or in place of a fee in lieu payment, charge an affordable housing fee to residential and/or non-residential development. This fee is meant to offset or pay for all or portion of the affordable housing demand generated by that development. Quite often, these fees are referred to as "linkage fees" because they are assessed in order to address the linkage between the development and the demand/need for affordable housing created by that development. Boston, Boulder, San Francisco, and Santa Monica all use this kind of fee. Santa Monica uses this fee as its "in lieu payment" for its inclusionary housing requirements. In Boulder, Boston, and San Francisco, the linkage fee is separate from and in addition to any fee "in lieu of" provision under the inclusionary housing program. Boston and San Francisco use this fee to collect revenue from non-residential development, while Boulder uses this fee to collect revenue from both residential and non-residential developments - all permanently affordable units are exempt from this fee in Boulder.

Table 4.4: Affordable Housing Linkage Fees

Community	Housing Linkage Fee
Boston (commercial only)	$ 8.62 per square foot (first 100,000 square feet of commercial feet exempted)
Boulder, Colorado	Housing Excise Tax $ 0.47 per square foot (nonresidential) $ 0.22 per square foot (residential)
San Francisco, CA (commercial only)	Net Additional Gross Square Footage X Base Fee Amount for Different Industries = Total Fee Entertainment: $ 13.95 per sq. foot Hotel: $ 11.21 per sq. foot Office Space: $ 14.96 per sq. foot R & D: $ 9.97 per sq. foot Retail: $ 13.95 per sq. foot
Santa Monica, CA (commercial and residential)	Affordable Housing Base Fee X Floor Area Base Fee = $ 28.15/sq. foot for ownership Base Fee = $ 24.10/sq. foot for rental

San Diego also employs a fee on commercial development, which generates about $ 500,000 a year.

B. Policy Categories for Fee In Lieu Provisions

Like density bonuses or other cost offsets, a fee in lieu can be as of right or discretionary, standardized or negotiated. Like costs offsets, no one approach can be deemed to be the "successful" one because different localities in different markets have different goals. These local differences largely dictate the differences in approach. Four broad policy categories of fee in lieu approaches can be gleaned from the previous methods: 1) On-Site Programs; 2) Hard Unit Programs; 3) Revenue-Raising Programs; and 4) Balanced Programs. In addition to these four categories, many fee in lieu provisions (regardless of the category) often contain provisions meant to address policy dilemmas faced by inclusionary housing programs. These provisions will be examined in a fifth category below.

On-Site Programs

In expensive markets with high land costs, it can be extremely difficult to develop affordable housing -even with a large pot of public money to help subsidize the cost. Furthermore, one of the benefits of inclusionary housing is to incorporate the affordable housing with the market-rate housing in order to promote racial and economic integration and to help change the perception of affordable housing. Programs that want to encourage the creation of units *on-site*, in conjunction with the market-rate units, will usually do two things:

a) set the fee as close as possible to the actual cost of creating an affordable unit elsewhere in order to encourage on-site construction; and

b) make any option to pay the fee in lieu (to build off-site or to donate land) only applicable to situations where the developer applies to the city for such right and shows that the payment of the fee (or the off-site option) is necessary due to some sort of hardship or infeasibility and/or that the alternative form of compliance (e.g. the payment of the fee) will help to provide some sort of additional benefit to the city's housing policy.

Cambridge, Massachusetts has never collected any fee in lieu money because they have done such a good job of following through on both "a" and "b" above. They've set the fee extremely high (at the actual cost of the difference between the market-rate price and the affordable price) and they've restricted usage of that fee in lieu provision to its discretion in very limited situations where "significant hardship" has been demonstrated. Because Cambridge is fairly dense and very expensive, the city would rather secure hard units than fee in lieu money.

Communities like Montgomery County, Fairfax County, Virginia, and Chicago all have done a good job at encouraging on-site construction of units. Over three decades, Montgomery County has created 12,000 affordable units (including 1000 plus purchased by the housing authority for extremely low-income households) within market-rate subdivisions. Payment of the fee in lieu or use of other alternative compliance measure is limited to county approval and demonstration of need.

Over a decade and a half, Fairfax County, Virginia has created nearly 2,000 affordable units within market-rate subdivisions. Use of the fee in lieu provision there is limited to "exceptional cases" where the developer shows that building on-site would be physically impossible or financially infeasible.

Finally, over approximately five short years, the City of Chicago has created over 1000 affordable units on site through the Affordable Requirements Ordinance (ARO) and the Chicago Partnerships for Affordable Neighborhoods (CPAN) programs (which are the inclusionary housing programs geared to on-site production). The city's fee in lieu amount of $ 100,000 has thus far been sufficiently high to discourage private developers from paying the fee in most cases.

Irvine, California only allows the fee in lieu to be paid "as of right" for developments of 5 or fewer units or for developments in certain hillside areas. Irvine further requires city approval for all other uses of the fee in lieu or any other alternative compliance measure (e.g. donating land, building off-site) and will only provide approval after the developer demonstrates that all options for construction of units have been exhausted.

There is of course another option for communities that want to ensure that they get hard units *on-site* and that is to not have a fee in lieu option at all. Sacramento, California and New York City do not have fee in lieu options. However, Sacramento and New York City do allow "off-site" construction, so they fall into the category below.

Hard Unit Programs

Many programs don't go quite as far as the "On-Site" programs above. The "Hard Unit" programs do want to make sure they get affordable units from the developer, but they are not as concerned about getting them in every situation on the

same site where the market-rate units are being created.

Programs that want to encourage the creation of units (on or off-site) will take the two steps (a and b) listed above for the "On Site" programs and then take one additional step (step C):

c) communities that are less concerned about integrating affordable units in the same development with market-rate units might adopt "in lieu" provisions allowing the construction of the affordable units on another site in the same community or same immediate area (or even in the same jurisdiction) or allowing the developer to rehab or preserve existing units in the same community or same immediate area (or even in the same jurisdiction).

For example, Sacramento, California does not have a payment in lieu of provision. They want to ensure that units are constructed (or that at least land is secured for the construction of units). They do not want money. As a result, the program has succeeded in creating nearly 3,000 units (constructed or planned) since 2000 and has collected $ 0 in fee in lieu funds.

New York City has adopted a similar posture. For its voluntary inclusionary housing policy, it will allow a developer to receive the cost offsets of: a) 33% density bonus; b) 421a property tax break; and c) access to tax exempt bonds and 4% tax credits, but if the developer does not build 20% affordable housing on-site, then they must build or preserve the same number of units within a one-half mile radius of the site or in the same community district as the site.

Finally, Madison, Wisconsin will only allow the payment of a fee-in-lieu if: a) the cost offsets don't exceed 95% of the revenue differential between the development with and without the affordable housing requirement; and b) off-site construction is not feasible.

Revenue-Raisers

Some programs are primarily meant to serve as revenue-raisers for affordable housing purposes. If this is intended, communities will take the following steps:

a) set the fee at a level that is below the actual cost of creating or subsidizing an affordable unit elsewhere; and

b) allow the fee to be paid "as of right"

Sometimes, programs will become "revenue raisers" without intention - possibly because communities did not take enough care in setting their fee-in-lieu level.

Programs that stand out as revenue raisers include, among others: San Diego's relatively new citywide inclusionary housing policy; Brentwood, California's program; and the City of Chicago's downtown density bonus program.

If a community has a revenue-raising program, it is absolutely essential that the local government have effective mechanisms for spending that money in a timely and efficient and effective manner to address the affordable housing issue in other ways.

San Diego has had an inclusionary housing policy since the early 1990s in its Future Urbanizing Area (FUA). That program does not have a fee in lieu option for developments of 10 or more units - the program produced 1200 affordable units between 1992 and 2003. The citywide program, on the other hand, (which passed in 2003), has only created 138 units from the inclusionary requirement but has collected over $ 18 million in revenue (with $ 6.5 million spent and another $ 21.3 million committed). The fee in lieu payment under the citywide program is a per square footage fee; it is much less than the actual cost differential between an affordable and market-rate unit; and developers may pay this fee as of right. According to the city, the overwhelming majority of the developers under the citywide

program pay the fee.

Brentwood, California also has a fee in lieu amount which is "as of right" for developments of 5-9 units. For "for sale" developments of 10 or more units, developer must get city approval to pay the fee and that approval is usually granted. The fee in lieu cannot be paid on rental developments of 10 or more units. Since its creation in 2004, the program has created 78 units (73 on-site and 5 off-site) and has $ 11-$ 12 million in committed fee in lieu funds.

In Brentwood, the fee in lieu approximates the "subsidy differential" amount between market-rate and affordable - $ 243,536 for units at or below 50% AMI; $ 182,393 for units at or below 80% AMI; and $ 70,470 for units at or below 120% of AMI It appears that the city's willingness to grant approval to pay the fee in lieu has made its program shade towards being a "revenue generator" (although 78 units created within inclusionary developments in 2-3 years for a community of its size is not a bad production figure either).

Finally, the City of Chicago's downtown density bonus program is a clear revenue-generating program. Under this program, developers may choose to access additional FAR above the base zoning in the downtown district, but only if they dedicate 25% of that additional FAR to affordable housing or if they pay a fee in lieu for that additional FAR. The fee in lieu (or "price" for the additional FAR) = [.85 X the cost of land in the area of downtown where the development is located] X Additional Floor Area. This program has generated $ 25 million in just over two years and has also begun to generate some units (approximately 24). The ability to pay the fee "as of right" and its modest cost for the value of the additional FAR make this a revenue generating program.

Balanced Programs

In balanced programs, the goal is to both raise revenues and create units. To accomplish this end, communities can use a variety of approaches: 1) the fee can only be paid when local approval is granted and such approval will be granted only if a developer meets some local standard (e.g. paying the fee will further the affordable housing policy to a greater extent than building units on site; or hardship; etc.); 2) the fee can only be paid under certain conditions (e.g. in downtown developments); 3) the fee is "as of right" but it is set at a level that is high enough to generate sufficient income, but not so high that it will discourage payment in all situations.

If local approval is required, communities retain great flexibility to get units when they want units and to get fees when they want fees. If a community intends to rely on local approval as the mechanism for operating a "balanced program," the community should take care to craft clear standards for when approval is granted and when it is not.

San Francisco's program provides a good illustration. The fee in lieu payment provision is "as of right" and can be paid on any development in any situation. However, the fee is based on the difference between the development cost of a market-rate unit and the affordable sale price. This amount is then multiplied by **the number of units required for "off site" development (which is higher than the baseline 15% requirement under the ordinance)**. This encourages on-site development but also ensures that the city will receive a very large fee in lieu payment when a developer decides to pay. Since 2003, San Francisco has created 1593 units (from inclusionary requirements and units funded by fee in lieu dollars) with another 250-350 units planned for each of the next couple years and has collected $ 27.4 million from fees.

Boulder has also made its fee in lieu payment provision "as of right" in all circumstances and has also set the fee in lieu level at a rather substantive amount - $ 103,000 for attached units and $ 121,000 for detached units. The program has generated $ 1.5 million in fees in lieu and 450 units since 2000.

Boston requires approval to pay the fee in lieu amount and the fee in lieu amount is quite high. However, approval is granted at times and the program has succeeded in producing 893 affordable units as well as $ 13.3 million since 2000. Approval to pay is also required in Chapel Hill and the fee is similarly set at a rather high level - the difference between

the market-rate price in the development and an affordable price (although it can be negotiated). However, approval to pay the fee in lieu has been granted on a number of occasions. The program has generated over $ 1 million in fee in lieu funds since 2000 as well as 288 units.

City approval is also required to pay the fee in lieu in Longmont, Colorado and Stamford, Connecticut. The fee in lieu in Longmont equals the replacement cost of the affordable units, which amounts to a value from $ 61,562 on the low end (for high density rental) all the way up to $ 115,692 (for "for sale" detached) on the high end. The program has produced 643 total units from inclusionary construction, another 627 units from the use of fee in lieu payments, and has collected over $ 4 million in fee in lieu payments. In Stamford, the fee is fairly substantial (ranging from 110% of the Stamford median income all the way up to 240% of the Stamford median income on the high end) - 347 units have been produced with 400 more planned and over $ 6 million in fees have been collected.

Tallahassee's program attempts to balance their needs for units and funds as well. They allow payment of a fee in lieu as of right and payment is actually quite low ($ 10,000 to $ 25,000 per affordable unit). This will generate some revenue for the local housing trust fund - developers should jump at the chance to pay this fee amount instead of building an affordable unit in certain market-rate developments. However, the fee in lieu option is not available for PUDs or RDIs (as mentioned above) and these are likely to capture many of the much larger developments, which should ensure that the program will also produce units. The program is very new so it's hard to predict how the program will play out, but it could create a nice balance of units and funds. Thus far, approximately three hundred affordable units are in the planning pipeline from two developments (one is a PUD and one is a RDI). No fees have been collected as of yet.

Addressing Dilemmas

Regardless of whether a program's goal is to secure hard units on site or off site, to generate revenue, or to strike a balance between revenue and units, many programs often need a fee in lieu provision in order to help address unforeseen or anticipated dilemmas. Fee in lieu provisions can: 1) Provide an alternative means of compliance when challenges arise for onsite development; 2) Fulfill alternative policy goals and secure revenue in situations where money will better serve the community's housing goals; and 3) Address the challenge presented by smaller developments.

First, in many cases, the fee in lieu option provides an alternative means of compliance when market conditions, site constraints, or the unique peculiarities of a development or development type create problems. For example, a program might allow the payment of a fee in lieu where there are overriding environmental concerns or site problems. In Irvine, California, the fee in lieu option is "as or right" for certain "hillside developments" that present site and environmental challenges. Or, the payment of a fee in lieu could be allowed where the development is a luxury high-rise development (with a pool, doorman, etc.) that will require extremely high assessment costs and association payments that will make it difficult for an affordable homebuyer to stay in the building. Or, a fee in lieu might be used in situations where the developer can show that the site is not feasible if affordable housing is included on site.

Montgomery County, MD has long structured its program to secure affordable units within market-rate developments - both to ensure the creation of hard units and to promote and achieve integration of affordable housing with market-rate housing. The program has largely succeeded. However, the county will allow a developer to pay a fee in lieu if the developer applies for this option and the county finds that: a) environmental constraints at the site make the inclusion of the affordable units economically infeasible; or b) "an indivisible package of services and facilities available to all residents" of the proposed development would cost the affordable homebuyers so much that it is likely to make the affordable units unaffordable. In addition, the county must find that the public benefit of the payment of the fee "outweighs the value of locating MPDUs in each subdivision throughout the County" and that accepting the fee will further the causes of the inclusionary program.

Second, the fee in lieu can help secure funds when that better serves the policy goals of the local community. For example, Davis, California wants to see its downtown core redeveloped and they know that some inclusionary

requirements could deter this activity in smaller downtown developments. As a result, Davis only allows a fee in lieu payment to be made on developments of 16 units or fewer in the downtown core and they have set the fee relatively low ($ 37, 000 per affordable unit).

In Boston, Chicago, or other major urban centers, similar considerations could arise with regard to downtown development. The fees gained from a downtown development in such cities may often create more affordable family housing in one of the city's neighborhoods than would have been created on-site in the downtown development. The downtown development will most likely not include family-sized units and the number of affordable units created downtown will be far less than the number that could be created in a city neighborhood (including, in many cases, some of the city's best neighborhoods).

This approach runs counter to inclusionary housing's philosophy of integration. However, in the situation of downtown development in urban centers, it may better serve the city's housing policy to allow at least some of the downtown developments to pay a fee in lieu (either through a discretionary fee where the city allows the developer to pay it in certain situations or through a fee in lieu that is "as of right" for downtown development). Chicago's downtown density bonus provision (which in practice appears to encourage payment over units) accomplishes this end - the fees collected ($ 25 million committed so far) will be used, in part, to subsidize affordable apartments all across the city for households at or below 30% of the AMI (among other uses). The population below 30% of the AMI is the population most in need in Chicago and this aspect of the inclusionary housing program generates significant revenue to help the city deal with this problem.

Third, the fee in lieu often needs to deal with the problems faced by smaller developments. Some communities require an affordable housing requirement at a very low threshold. Boulder requires it on all developments; Newton requires it on all developments of more than 2 units; Irvine, CA requires it on all developments; Davidson, North Carolina requires it on all developments except conservation easement subdivisions; and Carlsbad requires it on all developments of seven or more units. Plenty more communities require affordable housing in all developments of five or more units. In these kinds of programs, a 10-20% affordability component that gets rounded up can quickly become a 30-50% affordability requirement. The fee in lieu option provides a viable way for these smaller developments to contribute to solving the affordable housing crisis in the community. In Davidson, it is also offered as a way for developments of 8 or fewer units to meet their obligation for units at or below 50% of the AMI.

C. Implications for New Jersey

In the state of New Jersey, local governments have utilized both: a) "fee in lieu" payment provisions and b) development fee provisions. "Fee in lieu" payments have been utilized by New Jersey municipalities on sites zoned for inclusionary development. Instead of requiring the development to include 20% affordable housing, the municipality can allow the developer to pay a fee. Under COAH Rules in Round II, the fee in lieu payment was negotiated between the town and the developer and by rule was intended to be equivalent to the cost of subsidizing the affordable housing that would have been built on the site. Because the fee in lieu payment amount was defined as the amount necessary to subsidize the affordable housing that would have been built on site and because the local municipality historically retained control over *when* and *how much* a developer would pay in terms of a fee, the experience in New Jersey probably falls somewhere between a "balanced approach" and an "on site" approach.

Under more recent COAH rules, the amount of the "fee in lieu" is to be determined through one of three methods, all of which are meant to approximate the cost of creating an affordable housing unit. This approach aims to create a standardized and predictable fee in lieu amount for all development in that area. Whether the developer pays the fee or not remains an issue of local determination.

However, the utilization of "development fees" means that the New Jersey experience also falls into the category of "revenue raisers." New Jersey municipalities have utilized "development fees" on residential and non-residential

developments that are not designated as inclusionary sites (similar to the housing excise tax in Boulder, Colorado or linkage fees in Boston or San Francisco). In *Holmdel Builders Association v. Holmdel Township*, 121 *N.J.* 550 (1990), the New Jersey Supreme Court ruled that municipalities may impose mandatory development fees on residential and non-residential development, subject to COAH rules, in order to generate additional revenues to address affordable housing needs. The amount of these development fees have historically ranged from one-half of one percent (1/2 of 1%) to one percent (1%) of the value of the residential development (as measured by the assessed valuation of the property, the coverage amount of the Home Owner Warranty of a "for sale" unit of housing, or the appraised value as listed on the document utilized for the financing of the property if the property is a rental development) if the development has not received a density increase. If the development has received a density increase, then the fee can increase to 6% of the value of the property. These development fees cannot be imposed on a development that includes affordable housing (or on a site where a fee in lieu payment is being collected).

Both fee in lieu payments and development fees are to be deposited into local housing trust funds to be used for affordable housing purposes. Some municipalities have done better than others at spending the funds that they have collected. For example, Lawrence Township (according to the 2002-2003 COAH Annual Report) had collected $ 5,786,271.81 and had expended $ 4,955,284.93, demonstrating a fairly effective record of using the funds collected to create affordable housing within Lawrence or in another community as part of a Regional Contribution Agreement. However, other municipalities in New Jersey, not unlike municipalities from across the country, have not been as successful in spending the dollars that they have collected. In part, these dollars represent affordable housing opportunities foregone or affordable housing needs unmet by the local community. As pointed out from the national experience, it is crucial that municipalities develop detailed plans to effectively spend the dollars that they do raise.

D. Fee in Lieu Suggestions

In crafting an appropriate fee in lieu provision, consider the following suggestions drawn from the national experience with fee in lieu provisions:

1) If the goal is to primarily create hard units, calculate the fee in lieu by determining the actual cost of subsidizing a market-rate rate unit down to the affordable level or by determining the cost of creating/constructing an affordable housing unit in the community. In doing this, err on the side of setting the fee too high, not too low. This will encourage developers to either build the units on site or to build them off-site, if that is an option under the program. If the fee is too high, it can always be re-adjusted to encourage payment in certain situations. If there is a concern that the fee will be too low, do the following:

a) calculate the fee in lieu amount as the difference between the market-rate and affordable price (or some % of this) or as the actual cost of constructing/producing an affordable unit;

b) follow San Francisco's approach and multiply this fee in lieu amount per affordable unit by 1.5 times the number of affordable units required on site (this matches the "off-site" requirement in the San Francisco ordinance); and/or

c) only allow the fee in lieu payment to be made when the payment of a fee will advance the housing goals of the community to the same or greater extent than building affordable units on site (or some other appropriate local standard - e.g. building units on site would cause a hardship or be economically infeasible, building units on site would create environmental damage, etc.).

These three steps will ensure sufficient motivation to build units on site, but will also allow the fee in lieu to be used at the community's option. When the fee in lieu is used, it will generate a significant subsidy that will make a real difference elsewhere in the community. If these steps produce a fee amount that is too high and therefore is never used (e.g. Cambridge) and this outcome fails to meet the local housing goals, then the fee can be re-calibrated.

2) If the program goal is to create hard units in some places and collect fees in others, then consider the following steps for crafting a program that will help to accomplish both goals:

a) calculate the fee in lieu amount as the difference between the market-rate and affordable price or as the actual cost of constructing/producing an affordable unit (or some reasonable percentage of this);

b) consider setting a lower fee in lieu amount for those situations where you wish to encourage payment of the fee (e.g. downtown developments, environmentally sensitive areas, where market rate units are more moderately-priced, etc.);

c) allow the fee-in-lieu to be paid "as of right" in those situations where you would like to collect the fee in lieu or where you anticipate situations where the fee may need to be paid to address dilemmas (e.g. downtown development, small developments, etc.); and/or

d) require local approval to pay the fee and only allow the fee in lieu to be paid in situations where certain standards are met or certain dilemmas arise (when payment of the fee would advance the city's housing goals to an equal or greater extent than building affordable units on site; when building units on site would cause hardship or be economically infeasible; when there are overriding environmental concerns or site concerns; etc.)

3) If the program goal is to collect revenues, take the following steps: a) set the fee at a more reasonable level (something below the cost of producing or subsidizing an affordable unit); but not so low that the program doesn't collect any significant amount of funds and b) allow the fee to be paid "as of right.". San Diego's citywide program and Chicago's downtown density bonus provision appear to strike the right balance here. Newton, Massachusetts 3% fee on the value of market-rate units seems to be one that is too low (town officials are looking at raising its value).

4) Be Prepared to Spend Revenue Effectively. If the goal is to collect revenue, have the mechanisms, expertise, and development community in place to use those revenues effectively and efficiently to create or preserve affordable housing.

Crafting an effective fee-in-lieu policy is an art, not a science. It requires knowledge of the local market, a full understanding of the program's policy goals, and the willingness to track and monitor the program and re-evaluate the fee-in-lieu provision if it is not working to fulfill the programs' goals. Once again, local and state context matters most. Know your goals, know your market, and set your fee in lieu amount and policy based on that.

V. Recommendations and Conclusions

For over 20 years, New Jersey has been a pioneer and an inspiration to states and localities across the country looking for ways to address the affordable housing crisis. The record of production under the state regulatory framework established by the Fair Housing Act and administered by COAH has been nothing short of impressive. State policy and local government action through COAH-approved plans has created tens of thousands of affordable homes, many of them *without any state or federal financing*. By requiring the inclusion of affordable housing within market-rate developments on sites that provide at least a presumptive level of density, local governments and the development community have created desperately-needed affordable homes (many of them in highly desirable locations) that otherwise would not exist. And, under this framework, New Jersey has consistently served populations with lower-incomes than those served by other successful affordable housing efforts in other parts of the country. In compiling this impressive record on affordable housing, New Jersey has embodied the true spirit of Supreme Court Justice Louis Brandeis's call for our states to be "laboratories of democracy."

Of course, no system is perfect. In drafting the Third Round rules, New Jersey must examine how to best improve the state regulatory framework that has helped to create so much affordable housing and that has helped to inspire other state and local efforts across the country. No other state has passed a statewide regulatory framework that is as

far-reaching and comprehensive as New Jersey, but hundreds of inclusionary housing programs now exist nationwide (some of them passed prior to the beginning of New Jersey's efforts, most of them passed after) in a diverse array of locations. Many of these programs have been quite successful and now represent a significant portion of the affordable housing production in these communities.

As New Jersey takes steps to "re-tool" its regulatory framework for Round III and to adapt its framework to a changed world and marketplace, New Jersey can draw upon the lessons and experiences with inclusionary housing programs in other parts of the country to inform its own efforts at home. The following five recommendations are drawn from the national experience and are crafted to aid New Jersey in its efforts.

1) Establish a predictable affordable housing requirement coupled with a required density bonus or a required presumptive density level. COAH rules should instruct municipalities to: a) establish a clear affordable housing percentage requirement (e.g. 20% affordable housing) and b) to provide a minimum presumptive density bonus of some standardized amount (e.g. 20% density bonus), or in lieu of that, a minimum presumptive density level. Similar to the 40B program in Massachusetts and consistent with the experience of the past two decades in New Jersey, COAH rules should clarify that the percentage of affordable housing required must be a percentage of the total number of units in the development (after accounting for any additional density that is granted to the project). Inclusionary housing programs function best when they have a clear and predictable affordable housing requirement that market actors can take into account when they buy land and choose whether to invest funds in a deal. As the report documented, communities have succeeded with and without cost offsets, but all programs need a predictable and clear affordable housing requirement that market actors can incorporate into their financial decisions.

Whether or not a program succeeds depends almost entirely on local and state context. However, experiences from a number of locations nationwide, from Massachusetts, and from New Jersey all demonstrate the power and utility of at least a presumptive level of density for stimulating affordable housing development. As a result, it would seem prudent that COAH rules should require all communities that wish to require the inclusion of affordable housing in new developments to provide either a minimum percentage density bonus of some amount or, in lieu of that, at least a "presumptive density level" of some amount. COAH rules should establish the minimum density bonus percentage or the minimum presumptive density level that must be provided by a community. By setting a standardized minimum density bonus or presumptive density level, COAH will help to create predictable and transparent standards that market actors can rely upon when making development decisions and will maximize the chances that the affordable housing requirement will result in much-need affordable housing.

Implicit in the provision of a "density bonus" is the assumption that the density bonus is usable on a particular site. Therefore, it would be prudent for COAH rules to instruct municipalities that provide a density bonus that they must also provide a developer with the flexible zoning standards (e.g. reduced setbacks, increased height, reduced buffering, reduced street widths, reduced parking, etc.) necessary to make the density bonus "usable" on the site in question.

In providing a density bonus, COAH should provide municipalities with some sort of guidance about the amount of density bonus that should be granted - the greater the affordability requirement, then the greater the bonus that should be provided (unless other cost offsets are being provided in place of a higher density bonus). As stated earlier, examples nationwide vary widely - from programs with no density bonus (e.g. Boston, Boulder, Chapel Hill, Davidson, Longmont, etc.) to programs with very generous bonuses (e.g. Santa Monica where the possibility exists for up to a 50% density bonus). Programs that do include a bonus seem to settle near the level of providing a percentage density bonus that is equal to or slightly higher than the percentage of affordable housing required. For example, in Montgomery County, MD, the affordable requirement is 12.5% to 15% and the bonus is 17-22%, but there is no bonus until the developer includes 12.6% affordable housing. In Denver, for every affordable housing unit above 10% affordable housing, the city grants a bonus of one additional market rate unit for each affordable unit. A percentage-based density bonus that is equal to the percentage of affordable housing required - e.g. a 20% density bonus for 20% affordable housing - could serve as a good starting point. However, the exact amount of the density bonus

should be informed by examining market conditions, costs, and realities in New Jersey.

In providing a clear requirement for affordability and in providing a minimum density bonus or in lieu of that, a minimum presumptive density level, it is important to note that municipalities can accomplish these ends through a number of mechanisms. One, they can pass a citywide inclusionary housing ordinance. Two, they can pass an inclusionary housing ordinance that only applies to certain kinds of development (e.g. development with ten or more units) or only in certain locations (e.g. specific zoning districts). Three, they can choose to follow a "site based" approach (e.g. where individualized sites are identified and affordable housing requirements are imposed for those specific sites). In each of these scenarios, depending on how COAH proceeds with potential requirements for a density bonus or a presumptive density level, each location would need to either: a) provide a density bonus (with any additional zoning flexibility necessary to allow the developer to use the density bonus on that site) that meets or exceeds the COAH-prescribed standard for a minimum density bonus amount, or b) provide an underlying density that meets the COAH-prescribed presumptive density level.

2) Allow state and federal financing/subsidies to be used for greater and increased affordability. A number of programs nationwide wisely leverage state and federal housing subsidies in order to create more affordable housing (more units or greater levels of affordability) than is required under their program's baseline requirements. DCA should allow state and federal financing sources to be used in inclusionary developments that contain units to be counted towards a municipality's affordable housing obligation, BUT ONLY if the state and federal financing is used to produce affordable housing units above the baseline requirements for affordable housing (% of affordable housing required and level of affordability). So, for example, if 20% affordable housing is required in a particular development to meet a municipality's COAH obligation, with half of that housing affordable to household at or below 50% of the AMI and half of that housing affordable to households at or below 80% of the AMI, then state or federal financing sources would only be allowed in the project but only if those subsidies: a) help subsidize the creation of affordable units above and beyond 20% affordable or b) help subsidize those units that serve households at or below a lower income level, such as 30% of the AMI.

3) Link more generous cost offsets to greater and increased affordability. Many programs nationwide wisely leverage their own local "cost offsets" in an attempt to generate more affordable housing than is otherwise required under their baseline requirements. COAH rules and municipal regulations should similarly encourage developers to create more affordable housing than is required and to create housing that is affordable to lower income levels than required under COAH rules. For creating more affordable housing than required or for creating housing that exceeds COAH's affordability regulations, municipalities should be required to provide developers with additional cost offsets beyond a presumptive density level or beyond the minimum density bonus amount. And COAH should consider additional ways to provide municipalities with "additional credit" towards meeting their fair share obligations if they produce housing that is affordable to households at or below 30% of the AMI.

4) Fee in Lieu Amounts, at a minimum, should equal the cost to construct an affordable housing unit or the cost to subsidize a market-rate unit so that it can sell or rent at an affordable price. Municipalities should adopt a fee in lieu amount that a) approximates the subsidy necessary to "write down" the cost of a market-rate unit to an affordable level (subsidy differential approach) or b) approximates the cost of constructing/producing an affordable unit. As detailed above in this report, this can be accomplished by requiring the fee per unit to equal a) the difference between a determined market-rate price and a determined affordable price or b) the cost to actually construct or produce an affordable unit by adding together land costs, soft costs, and hard costs of construction for an affordable unit in the community or region. The first amount estimates what will be needed in order to "write down" the price of a market-rate unit to an affordable level on another development; the second method estimates the amount needed to construct an affordable unit from "scratch". Both serve the purpose of estimating the funds needed to create an affordable unit elsewhere in the community.

In setting the actual fee in lieu amount per affordable unit, municipalities have a few options. Under either method, one

can establish a flat "fee in lieu payment" amount for all developments in the municipality; one can establish a tiered "fee in lieu payment" amount that is tied to the level of affordability required for that unit (e.g. a fee amount for units at or below 80% of the AMI; a fee amount for units at or below 50% of the AMI, etc.); and, also under a subsidy differential approach, one can also establish a "fee in lieu payment" per affordable unit on a development by development basis (using the specific market-rate and affordable prices from that development).

Going the route of a fee in lieu amount that is standardized for all developments (either as a flat or tiered amount as described in the first two options in the previous sentence) provides greater market predictability and represents less of an administrative burden at the local level. Going the route of a development-specific or tiered "fee in lieu" amount arguably ensures a more "accurate" fee in lieu amount and arguably treats developments more equitably in one sense - higher-end developments pay more and developments with more moderately priced market-rate units pay less. Most programs nationwide use some form of a standardized approach, often with a provision that generates a higher fee in lieu amount per unit for the more affordable units (e.g. $ 100,000 per affordable unit at 80% of the AMI; $ 125,000 per affordable unit at 50% of the AMI).

It is recommended that COAH adopt a standardized fee in lieu amount for each of the COAH regions.

5) Utilize fee in lieu provisions to address policy goals and dilemmas. Allow individual municipalities the ability under COAH rules to establish some local criteria for the payment of the fee in lieu in order to address local policy issues. Municipalities should attempt to secure the inclusion of affordable units within market-rate developments whenever possible. However, this will not always be possible or desirable. Fee in Lieu amounts should be as clear and as predictable as possible. As much as possible, developers should be able to calculate the fee in lieu amount that would be owed before choosing to proceed with a development.

But, COAH should consider allowing local municipalities the option to set policy as to when a fee in lieu provision will be used in order to address the unique policy and market considerations of each town or region. Is there a portion of town that is struggling to revitalize? Are there environmentally-sensitive parts of town or areas that are "difficult to develop" because of topographical challenges? Are there special housing needs (e.g. rental housing for the disabled or homeless or working poor) that could be well served by an infusion of cash instead of by the creation of affordable units? These are the kinds of questions that each town should ask itself in crafting policy as to when the municipality will allow a fee to be paid "in lieu of" building affordable housing on-site. These are the kinds of permutations that COAH should consider allowing under its rules.

"All politics is local," Tip O'Neill once famously counseled. When it comes to inclusionary housing programs, maybe the most important lesson is "all success is local." Local markets, local politics, the presence or absence of a statewide regulatory framework, and local policy goals matter most and play the biggest roles in determining the level of success in any program. Therefore, COAH must determine what will work best in New Jersey based upon state and local factors that are specific to New Jersey. Hopefully, the lessons and recommendations embodied in this report will be a useful guide to that end.

<i> California Coalition for Rural Housing (CCRH) and Non-Profit Housing Association of Northern California (NPH). 2003. *Inclusionary Housing in California: 30 Years of Innovation*. San Francisco, CA: California Coalition for Rural Housing and Non-Profit Housing Association of Northern California, p. 7.

<ii> Non-Profit Housing Association of Northern California (NPH). 2007. *Affordable by Choice: Trends in California Inclusionary Housing Programs*. San Francisco, CA: NPH, Executive Summary.

<iii> Radhika K. Fox and Kalima Rose. 2003. *Expanding Housing Opportunity in Washington, D.C.: The Case for*

Inclusionary Zoning. A PolicyLink Report. Oakland, CA: Policy Link, p. 15.

<iv> Contact the Innovative Housing Institute for more information on DC metro area programs. See www.inhousing.org

<v> Richard Tustian. 2000. "Inclusionary Zoning and Affordable Housing," in *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?* New Century Housing, Vol. 1, Issue 2. Washington, D.C.: The Center for Housing Policy, p. 23.

<vi> Citizens' Housing and Planning Association (CHAPA). January 2006. *Fact Sheet on Chapter 40B: The State's Affordable Housing Zoning Law*. Boston, MA: CHAPA. Available on the Web at: http://www.chapa.org/40b_fact.html. Accessed: 8-19-07.

<vii> Clark Ziegler. 2002. "Introduction," in *Inclusionary Housing: Lessons Learned in Massachusetts*. National Housing Conference (NHC) Affordable Housing Policy Review. Vol. 2, Issue1. Washington, D.C.: National Housing Conference, p.1.

<viii> Contact the Citizens Housing and Planning Association (CHAPA) for more information on Chapter 40B and inclusionary housing efforts in Massachusetts. www.chapa.org

<ix> See, for example: Alan Mallach. 1984. *Inclusionary Housing Programs: Policies and Practices*: New Brunswick, NJ: Center for Urban Policy Research - Rutgers University.; Karen Destorel Brown. 2001. *Expanding Affordable Housing Through Inclusionary Zoning: Lessons from the Washington Metropolitan Area*. Washington, D.C.: Brookings Institution, Center on Urban and Metropolitan Policy, p. 13.; Dr. Robert W. Burchell and Catherine C. Galley. 2000. "Inclusionary Zoning: Pros and Cons," in *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?* New Century Housing, Vol. 1, Issue 2. Washington, D.C.: The Center for Housing Policy, p.7; Nico Calavita and Kenneth Grimes. 1998. "Inclusionary Housing in California: The Experience of Two Decades," *Journal of the American Planning Association*. Vol. 64, No. 2, Spring. Chicago, IL: American Planning Association (APA), pp. 150-170.; Arthur O'Sullivan. 1996. *Urban Economics*. 3rd. Ed. Chicago, IL: Irwin Publishers, p. 294.; David Paul Rosen and Associates. 2002. *City of Los Angeles Inclusionary Housing Study: Final Report*. Los Angeles, CA: Prepared by David Paul Rosen and Associates for the Los Angeles Housing Department.; Nico Calavita, Kenneth Grimes, and Alan Mallach. 1997. "Inclusionary Housing in California and New Jersey: A Comparative Analysis." *Housing Policy Debate*. Vol. 8, Issue 1. Washington, D.C.: Fannie Mae Foundation. P. 122.; Marc Brown and Ann Harrington. 1991. "The Case for Inclusionary Zoning, " *Land Use Forum* 1(1): 23-24.; San Diego Housing Commission. 1992. *Inclusionary Housing Analysis: Balancing Affordability and Regulatory Reform*. Report to the Deputy City Manager. San Diego, California.; Center for Housing Policy. 2000. *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?* New Century Housing, Vol. 1, Issue 2. Washington, D.C.: Center for Housing Policy.; CCRH and NPH, *Inclusionary Housing in California*, p. 20.; Fox and Rose. 2003. *Expanding Housing Opportunity in Washington, D.C., p. 13.*

<x> NPH, *Affordable By Choice*, Executive Summary.

<xi> Brown. *Expanding Affordable Housing Through Inclusionary Zoning*, p. 14.; Joyce Siegel. 1999. *The House Next Door*. The Innovative Housing Institute. Available Online: http//www.inhousing.org.

<xii> NPH, *Affordable By Choice*, p. 33.

<xiii> Bonnie Heudorfer for the Citizens' Housing and Planning Association (CHAPA). March 2007.*Update on 40B Housing Production*. Boston, MA: CHAPA.

<xiv> Ibid.

<xv> Ibid.

<xvi> Ibid. All of the data in this paragraph comes from the *Update on 40B Housing Production* report.

<xvii> New Jersey Council on Affordable Housing (COAH). 2003. *Annual Report 2002-2003*. Trenton, NJ: COAH.

<xviii> Ibid.

<xix> Ibid.

<xx> New Jersey Council on Affordable Housing (COAH). 2003. *Annual Report 2002-2003*. Trenton, NJ: COAH.

<xxi> CCRH and NPH. *Inclusionary Housing in California*.

<xxii> NPH, *Affordable by Choice*, Executive Summary.

Exhibit A
Examples of Municipalities with Inclusionary Housing Programs

(Information is current as of July 2007 unless otherwise noted)

	Affordable Units Produced	Threshold Number Of Units and Income Target	Affordable Housing (Required Percentage)	In lieu Fee Payment/ Off-site Development	Density Bonus	Other Developer Incentives
Boston, Massachusetts (2000)	893 inclusionary units 493 For Sale 400 Rental 8,349 Market Rate ($13.3 million collected from fee in-lieu payments as of July '07)	Threshold: 10 or more units Income Target: 100% To 160% of **Boston Median Income (BMI)** For Sale (130% -160% of **BMI**) Rental (100 to 120% of **BMI**)	15%	Fee in lieu of payment permitted, but must be approved by City Rental Units: $200,000 Per Affordable Unit For Sale Units: Greater of $200,000 or 50% of the Difference between the Purchase Price of the Market Rate Units and the Price of the Affordable Units Off-site Development Can be Approved by City	None	None May Not Use Additional Local, State, or Federal Dollars to Meet the IZ Requirement
Brentwood, California (2004)	Approximately 78 Units (36 For Sale; 37 Rental; and 5 Off-Site); Assessed $11 million to $12 million in fee in lieu payments ($5 million currently in city's affordable housing fund)	Threshold: 5 or more units Income Targets: 50% to 120% of AMI **For Sale Projects**: 50-120% AMI 5% at 120% of AMI; 4% at 80% of AMI; 3% at 50% of AMI **Rental Projects**: 50-80% AMI 5% at 80% of AMI; 5% at 50% of AMI	10%	Difference between the affordable price and the cost of building a market-rate unit (updated annually) For developments of 5-9 units, fee-in-lieu is as of right ($182,393) For rental developments of 10 or more units, fee-in-lieu is not allowed For for sale developments of 10 or more units, developer must obtain city approval, which is most often granted. Fee in lieu is based on the affordable unit required-- For units serving 50% or below AMI -- $243,536 For units serving 80% or below AMI -- $182,393 For units serving 120% or below AMI -- $70,470 Dedication of land or units (existing or to be constructed off-site) can be allowed by city	9% local bonus above the midpoint of the density range established by the zoning code (local bonus -- not often granted); Up to 35% by state law**	Processing fee and impact fee deferrals, flexible design standards (e.g. reduced lot sizes and setback requirements, landscaping requirements, interior amenities, parking requirements, ability to mix housing types, etc.), expedited permitting, direct financial assistance (however, town grants few incentives in practice -- especially reluctant to grant density bonuses or parking reductions)
Brookline, Massachusetts (1987, revised 1997 and 2002)	Approximately 70 Units $5.6 million in fee-in-lieu collected and spent	Threshold: 6 or more units (any development that needs a special permit) Income Target: 100% of AMI (2/3 at 80% AMI)	15%	For 15 or fewer units, developers may choose to pay the fee in lieu, which is called a "Trust Payment," which is actually a payment on each market-rate unit Ownership Units = (Sales Price - $125,000) X Contribution Factor (3% for 6 units; 3.75% for 7 units; 4.5% for 8 units, etc.) Rental Units = [Market Value of the Development -- (number of units X $125,000)] X Contribution Factor Additional Trust Payment for conversion of rental units to condos	None	1) Parking Reduction -- 1 space per affordable units instead of 2 or more 2) Different Materials Allowed for Affordable
Boulder, Colorado (2000) -- Passage of Mandatory Ordinance	450 units (about 65 units per year) $1.5 million plus in fee in lieu fund collected 1,881 permits issued in that time	Threshold: All residential development, except for a single detached dwelling unit with a total floor area of less than 1600 square feet Income Target: 57-77% AMI Rental: 57% of AMI (can go up to 67% of AMI); For Sale: 67% of AMI (can go up to 77% of AMI)	20% (voluntary for rental; mandatory for ownership)	As of right, developments of 4 or fewer units may provide one unit on-site, one unit off-site, dedicate land for one unit, or make the fee-in-lieu contribution Ownership Developments (Over 4 units) must provide ½ of the units on site -- can be allowed to develop the ½ off-site. Rental Developments (over 4 units) can be allowed to dedicate land that is equivalent in value to the fee-in-lieu contribution plus an additional 50% to cover transaction costs or provide land that would allow the development of the required number of affordable units, or dedicate existing rental units Payment in Lieu is always "as of right" for any developer who chooses that method of compliance Attached Units: $103,000 Detached Unit: $121,000	None	Housing Excise Tax Waived for Permanently Affordable Units Waiver of Development Excise Tax if you make more than 20% affordable; Exemption from Residential Growth Management System (RGMS) if more than 35% affordable
Cambridge, Massachusetts (1999)	450 units currently under deed restriction with many more on the way 3,860 Market Rate Units	Threshold: 10 or more units Income Target: 65- 80%AMI Rental and Ownership	15%	Fee = Difference in Price of Market-Rate Unit and Affordable Housing Unit Fee in-lieu theoretically allowed if developer demonstrates a "significant hardship." The process is intentionally arduous and independent approval would have to be granted by the Affordable Housing Trust and the Planning Board, which have never done so.	30% increase in FAR 1/2 of FAR Increase Allocated to Market Rate 1/2 of FAR Increase Allocated to Affordable	Increased FAR, decreased min. lot area requirement, no variances needed for affordable units

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Examples of Municipalities with Inclusionary Housing Programs

(Information is current as of July 2007 unless otherwise noted)

	Affordable Units Produced	Threshold Number Of Units and Income Target	Affordable Housing (Required Percentage)	In lieu Fee Payment/ Off-site Development	Density Bonus	Other Developer Incentives
Carlsbad, California 1993	1,600 affordable units (1,300 rentals; 300 for sale) 10,000-12,000 market-rate units	Threshold: 7 or more units Income Target: 70% of AMI (Rental) 80% of AMI (Ownership)	15%	Fee in lieu only available to Developments of 6 or fewer units $4,515 per unit Fee = 15% of the subsidy required to make one, newly constructed attached housing unit affordable to a household at 80% of the AMI If building on-site is infeasible or creates unreasonable hardship, town may also allow developer to: a) pay fee in lieu; b) build a higher % of affordable housing off-site, c) rehab existing units, d) construct a shelter or other special needs housing in lieu of building on-site, or e) purchase affordable housing credits from the city.	Developer may apply-only granted on a case by case basis. Up to 35% bonus by state law	None
Chapel Hill, North Carolina* (2000)	288 units constructed or approved $1,132,000 collected or committed since 2000	Threshold: 5 or more units Income Target: 60-80% AMI (usually 70% AMI)	15% affordable	In-lieu fee allowed with the approval of the Town Council. The fee is equal to the cost of making homeownership possible for a targeted family multiplied by the number of affordable units owed.	None	None
Chicago, Illinois (2003 – Passage of Initial Affordable Requirements Ordinance (ARO), amended 2007; 2002 – Creation of CPAN Program 2004 – Creation of Downtown Density Bonus Program)	Over 1,000 affordable units and over $25 million in fee in lieu commitments since 2002	Threshold: CPAN: 10 or more units (based on negotiation between the developer and local alderman) ARO: 10 or more units (on all developments that receive cash assistance from the city, city land, an increase in zoning density, a zoning change from non-residential to residential, or that utilize the planned unit development process) Downtown Density Bonus: N/A Income Targets: 60% of AMI (rental) 100% of AMI (for sale)	10% (20% for developments receiving "city assistance" such as Tax Increment Financing subsidies)	In lieu fee is: ARO: $100,000 per affordable unit; CPAN: negotiated amount; any off-site option is negotiated Downtown Density Bonus Program: median cost of land in that area of downtown X [.80 X Additional floor area granted] There are no formal off-site development provisions	ARO: only that which is provided implicitly (e.g. zoning changes, PUDs, etc.) CPAN: only if negotiated Downtown Density Bonus: Yes (depends on the kind of development – based on a schedule in the zoning code)	Under CPAN, can receive fee waivers, landscaping assistance, marketing assistance, cash subsidy, purchase price assistance to the buyer, and possibly a density increase if negotiated ARO: None Downtown Bonus: None
Davidson, North Carolina (2001)	265 units constructed and approved $500,000 in fee in lieu funds collected or committed	Threshold: 8 or more units must build on site (less than 8 units can either pay in-lieu fee or build on site) Income Target: 50-150%AMI A minimum of 30% of the affordable units must be targeted to 50% of AMI or below; As much as 30% of the affordable units may be targeted to 50-80% of AMI; As much as 20% of the affordable units may be targeted to 80-120% of the AMI; As much as 20% of the affordable units may be targeted to 120-150% of the AMI.	12.5% for all new developments except conservation easement subdivisions	Ordinance does not provide for off-site construction or in-lieu fee payment for projects of 8 or more units; Ordinance gives projects of less than 8 units the option to pay an in-lieu fee. Fee in Lieu = (Median price per square foot of market-rate housing – median price per square foot of affordable housing) X Median square footage for an affordable unit. Fee in lieu may be paid by developers "as of right": a) in developments with 8 or fewer units; or b) to satisfy their obligation to construct units affordable to households at or below 50% of the AMI	Affordable units don't count toward the den sity of the site	None

*Chapel Hill, North Carolina does NOT have a mandatory Inclusionary Zoning Ordinance. Instead, they have a voluntary ordinance that is heavily encouraged. Most Developments comply – %s are often negotiated (higher or lower than 15%).

Examples of Municipalities with Inclusionary Housing Programs

(Information is current as of July 2007 unless otherwise noted)

	Affordable Units Produced	Threshold Number Of Units and Income Target	Affordable Housing (Required Percentage	In lieu Fee Payment/ Off-site Development	Density Bonus	Other Developer Incentives
Davis, California (1990)	1,800 affordable units $220,000 in fees in lieu collected since 1999 ($70,000 to $100,000 collected in 2007 -- $66,000 spent already)	Threshold: All Residential Development of 5 or more units Income Target: 50-120% AMI Rental (5 to 20 units) – 15% at 80% AMI, 10% at 50% AMI Rental (20 or more) – 25% at 80% AMI, 10% at 50% AMI For Sale (5 or more units) – 80%- to 120% of AMI (avg. at 100% AMI); Land Dedication – 65-80% of AMI	25% (5 to 20 units – rental or for sale; over 20 units for sale) 35% (more than 20 units rental) *these percentages include the density bonus granted to the developer	Fee in Lieu = $37,000 per affordable unit (for 2007-08) (1/2 of the subsidy needed to build affordable housing on donated land) Only used in limited situations – developments in the downtown core with fewer than 16 units and fewer than 39 bedrooms All rental developments must construct their affordable units on-site (no in lieu provisions) Ownership developments of 5-75 units, 100% of units must be on-site (unless qualify for limited fee-in-lieu payment) Ownership developments of 76-200 units, developer must offer a land dedication to develop affordable units for households earning 65-80% of AMI off-site (assuming a density of 15 units per acre) Ownership developments of 200 plus units, 12.5% on site (80-120% of AMI) and 12.5% by land dedication (65-80% of AMI)	One for One for On-Site Affordable Units and for land dedications (% affordable housing requirement calculation includes the bonus units) Up to 35% bonus by state law	Relaxed zoning requirements, reduced parking and setbacks, expedited permitting (but all are discretionary and tailored to each project, if granted at all)
Denver, Colorado (2002)	Approximately 1000 units produced and planned	Threshold: 30 or more units in for-sale developments; rental set-aside is voluntary Income Target: For-sale at 80% to 95% AMI; rental at 65% AMI or below	10%	Off-site development allowed. A fee in-lieu of 50% of the price per affordable unit is permissible	10% (but only if you set aside more than 10% affordable housing)	Cash subsidy, reduced parking requirements, expedited review process
Fairfax County, Virginia (1991)	Over 1200 produced; over 600 in the pipeline	Threshold: 50 or more units Income Target: 70% AMI or below	5-12.5% SF-up to 12.5% MF-6.25-12.5% MF w/Elevator-5-6.25%	Fee in lieu = FMV of the affordable unit. Fee in-lieu allowed in "exceptional cases" where developer shows on-site to be physically impossible or financially infeasible to build.	Sliding Scale of 10-20%	Parking Reduction in some cases for multi-family buildings
Highland Park, Illinois (2003)	16 units approved $240,000 in fee in-lieu money	Threshold: 5 or more units Income Target: 50%-120% AMI for for-sale units, at least 50% must be sold to 80%AMI. On average, the set-aside units must target 65% of the AMI; remaining units target, on average, 100% of the AMI. Rental units: no less than 33% target between zero and 50% of the AMI, no less than 33% of the units target between 51% and 80% of the AMI, and 33% target 81% and 120% of the AMI	20%	In-lieu fee determined by the City Council and deposited in the Affordable Housing Trust Fund; $100,000 per unit currently Developments of 19 or fewer detached, single-family homes may pay fee in lieu "as of right" Developer may also construct units off-site or donate land with city approval	One additional market-rate unit for each affordable unit built; PUDs can receive up to 1.5 times the number of market-rate units for each affordable unit	Fee waivers (ex. impact, demolition, utility connection fees) Demolition Tax Waiver
Irvine, California (adopted mandatory ordinance in 2003 but has had voluntary inclusionary policies since 1978)	Since 2003 update, 769 built (752 rental units and 17 ownership units) 152 under construction ($5.1 million of $12.5 million in fee in-lieu money collected) In 2006--2,172 total units built 144 were affordable 150 affordable were under construction & to be completed in 2007	Threshold: All developments, any size Income Target: 50-120% CMI 5% at 50% of the County Median Income; 5% at 51-80% CMI; and 5% at to 80-120% CMI	Mandatory; 15% of all units	$12,471 per unit of affordable housing required As of Right for Developments of 5 or fewer units and developments in certain hillside areas. Fee in-lieu payments and other alternatives to on-site units permissible if developer demonstrates having exhausted all options for construction of units. Fee formula based on average land value.	Up to 35% by state law**	Reduced Parking Requirements Reduced Fees Reduced Park Land Set Aside Expedited Permit Process

Examples of Municipalities with Inclusionary Housing Programs

(Information is current as of July 2007 unless otherwise noted)

	Affordable Units Produced and Fee in-lieu Collected	Threshold Number Of Units and Income Target	Affordable Housing (Required Percentage)	In lieu Fee Payment/ Off-site Development	Density Bonus	Other Developer Incentives
Longmont, Colorado (1995, amended '01)	643 affordable units (188 ownership 455 rental) 4,862 total units in that time $4,002,126 collected ($902,640 committed) 627 additional affordable units from fees	Threshold: No threshold in annexation areas 5 or more units everywhere else Income Target: 50-80% AMI 80% AMI (For Sale) 50% AMI (Rental)	10% of all units in annexation areas and citywide	Fee in Lieu = Cost to Construct Affordable Unit (Hard Costs + Soft Costs + Land) $115,692 (for sale detached) $75,528 (for sale attached) $61,562 (high density rental) $75,604 (low density rental) Must receive permission to pay fee in lieu, build off-site, dedicate existing units, or partner with non-profit to fulfill requirement Fee in Lieu used for high-end deals	None for 10% Set Aside Only Possible on 12-15% Set Aside at Lower Income Levels	Development Fee Reduction Program (for 10% Set Aside) – 20-50% Reduction Affordable Housing Incentive Program (only for 12-20% Set Aside at Specific Income Levels) – eligible for expedited review, density bonus, zoning and design flexibility, additional fee waivers, marketing assistance
Madison, Wisconsin (2004 Amended 2006)	300 units (2004-05) out of 2000 total dwelling units; collected $900,000 in fee in lieu payments)	Threshold: 10 or more units Income Target: 80% of AMI or less (for sale) (rental is voluntary due to WI Supreme Court decisions regarding rent control)	15%	Not allowed often, only if : 1) cost offsets don't cover 95% of the revenue differential between a non-inclusionary development and an inclusionary development; and 2) off-site construction is not feasible. Fee in Lieu Amount = 10% of the average sale price of the owner-occupied units in the development X each affordable unit that will not be provided	Yes (varies with different zoning districts) – Developer requests offsets from a menu and may request offsets equal to the revenue differential between the development without any inclusionary requirement and one with an inclusionary requirement; the Director of the Planning reviews these requests	Developer requests offsets from a menu (see density bonus) Reduced park development fees, reduced park dedication requirements, parking reductions, cash subsidies of up to $2,500 to $5,000 per affordable unit (depending on the kind of affordable unit and the type of development), additional FAR, additional floor or story in the downtown district, ability to mix housing types, expedited review, residential development in commercial and industrial zones, reduced street widths, use of state and federal subsidies if you agree to increase % or amount of affordability.
Montgomery County, Maryland (1974)	Over 12,000 units	Threshold: 20 units or more Income Target: 65% AMI or below	12.5-15% of all units Of these, PHA may purchase 40%, and qualified not-for-profits may purchase 7%	Fee in Lieu = 125% of imputed lost of land to donate land May request approval to make fee in-lieu payment or build affordable units off-site in contiguous planning area if developer demonstrates environmental constraints, other factors related to infeasibility, and benefits of alternative compliance.	Up to 22%	Waiver of water, sewer charge and impact fees. Offer 10% compatibility allowance and other incentives. May apply for additional density bonuses.
Newton, Massachusetts (1977, Revised 2003))	502 units $2.2 million collected in fee in-lieu payments	Threshold: All developments more than two units Income Target: 3 or Fewer Units-80% AMI 3 or More Units 2/3 80% AMI --1/3 50%AMI	15% Now	If a development is below 10 units, a developer can make a fee in-lieu payment, at 3% of the market value of each market rate unit in the development.	None	None
New York City, New York (2005)	Approximately 200 Rental Units Constructed; Over 7,000 affordable units anticipated over the next decade	Threshold: N/A Applies to Large, targeted rezonings in areas of the city where upzonings are occurring Income Target: 80% AMI – in some places, it is 80% AMI with an option to do 10% at 80% AMI and 15% at 120% AMI	20% (Voluntary) – in some places, there's an option to do 25% with 15% at the 120% AMI level	None Off-Site Construction Option or Preservation Option within one-half mile radius of site or in the same community district (as of right)	33% Density Bonus in FAR (As of right and above the base zoning level that the area has been upzoned to)	Property Tax Break Under Reformed 421-A program -- 20-25yr property tax exemption Tax Exemption Bonds and 4% Tax Credits If Bonds and Tax Credits are used, affordability levels drop to below 60% and 50% AMI

Examples of Municipalities with Inclusionary Housing Programs

(Information is current as of July 2007 unless otherwise noted)

	Affordable Units Produced	Threshold Number Of Units and Income Target	Affordable Housing (Required Percentage)	In-lieu Fee Payment/ Off-site Development	Density Bonus	Other Developer Incentives
Pleasanton, California (adopted mandatory ordinance in 2002 but has had voluntary inclusionary policies since the late 1970s)	635 units produced and planned ($14.85 million collected in fee in-lieu payments)	Threshold: 15 or more units, but projects under 15 units must pay an in-lieu fee Income Target: Very-low-, low-, and moderate- income households (based on HUD definition)	For new multiple-family residential projects, 15% for very-low-and/or low-income households; For new single-family projects, 20% for very- low-, low-, and/or moderate-income households (based on HUD definitions)	Developers can opt to construct affordable units off-site, make a land dedication, or pay an in-lieu fee. Fee calculated based on gap between affordable price and market price of housing, and is now $9,000 per unit of affordable housing required.	Up to 35% by state law**	Fee waiver or deferral, design modifications, priority processing
Sacramento, California (2000)	2,999 units planned or constructed	Threshold: Developments with more than 9 units Income Target: 50-80% AMI one-third of the units priced between 50 and 80% AMI; the remaining two-thirds of the units priced at 50% AMI.	15% 10% at 50% AMI 5% at 50-80% AMI.	No Fee in Lieu Solely SF Developments can do 100% of units at 80% AMI Condos of 200 or more units can ask for 10% at 50-80% AMI	Up to 35% by state law**	Expedited permit process, fee waivers, relaxed design standards.
San Diego, California (1992, expanded in 2003)	1,200 in FUA between 1992-2003 138 Units constructed since 2003 under citywide program; 5,000 Market Rate Units built since 2003 ($18 million collected in fee in-lieu payments, an additional $21.3 million committed) $6.5 Million spent	Threshold: 10 or more units Income Target: At or below 65% AMI (Rental) At or below 100% AMI (For Sale)	10%	[.50 (Median price of market-rate unit – price that a household of four at median income can afford)] and then product of this is divided by 10 (set aside amount) and then that amount is divided by 2,000 square feet (average size of unit) Fee in lieu is as of right and 98% of developers pay the fee.	Up to 35% by state law**	None in FUA FUA – no offsets Citywide program – expedited permitting, reduced water and sewer fees, possibility of reduced parking, setbacks, increased height, etc. on a case by case basis, and federal, state, and local subsidies but only if additional or deeper affordability is provided.
San Francisco, California+ (2003, amended 2006)	1,593 units since 2003 (from fee in lieu funds and inclusionary units); 250-350 affordable units planned per year for the next few years from inclusionary developments; $67 million in fees collected between 2003 and 2007	Threshold: 5 or more units Income Target: 60-120% of San Francisco Median Income (SFMI) 60% SFMI (Rental) 80% SFMI for off-site "for sale" 80-120% SFMI (For Sale on site - w/ average at 100% AMI)	15% (only 12% if building taller than 120 feet) 15% or replacement of 100% of demolished or converted affordable housing, whichever is greater in projects where existing affordable housing is demolished or converted	Developers can elect to build affordable units off-site, but the affordable housing requirement increases to 20% for off-site units (only increases to 17% for buildings taller than 120 feet) and must be affordable at 80% AMI; Fee = Difference between total development cost of a market rate unit and the affordable sales price X the amount of housing that would need to be developed off-site Studio = $187,308 per unit 1 BR = $256,207 per unit 2BR = $343,256 per unit 3BR = $384,562 per unit As of right and updated annually Affordable Housing Fee for Commercial Development (Jobs-Housing Linkage Fee): Net Additional Gross Square Footage X Base Fee Amount for Different Industries = Total Fee (Entertainment = $13.95; Hotel = $11.21; Office Space = $14.96; R&D = $9.97; Retail = $13.95.)	Up to 35%** (Rarely Granted)	Refunds available on the environmental review, building permit fees and conditional use fees that apply to the affordable units

Examples of Municipalities with Inclusionary Housing Programs

(Information is current as of July 2007 unless otherwise noted)

	Affordable Units Produced and Fee in-lieu Collected	Threshold Number Of Units and Income Target	Affordable Housing (Required Percentage)	In lieu Fee Payment/ Off-site Development	Density Bonus	Other Developer Incentives
Santa Fe, New Mexico (1998)	Approx 500-600 units produced and planned (183 home ownerships units created in 2005; 200-300 rental units are in the pipeline for the next 2-3 yrs.)	Threshold: All developments are covered Income Target: 80% to 120% AMI	30% for sale; 15% rental	Only permitted in case of economic hardship and when required affordable percentages create a fraction of a unit. Fee based on square footage and cost to build units.	Bonus of 15% over what the parcel is currently zoned	Waiver of building fees; Also, impact fees may be waived only for affordable units
Santa Monica, California (1998)	769 affordable; 2,089 market rate units during that time $619,126 in affordable housing fees collected in FY 05/06 alone	Threshold: 2 or more units Income Target: 50-100% AMI Rental – 10% at or below 50% AM; 10% at or below 80% AMI For Sale – 4-15 Units – 20% at 100% of the AMI (or can do rental housing for the 20% at 60% AMI) 16 Units or More – 25% at 100% of the AMI	25% Affordable (for sale, 4-15 units) 20% Affordable (for sale, 16 or more units) 20% Affordable (rental)	Fee in Lieu = "Affordable Housing Base Fee" ("AHBF") X Floor Area "Affordable Housing Base Fee" -- $28.15/sq. foot for ownership; $24.10/sq. foot for rental "As of Right" for: a) 2-4 Units and b) residential developments in commercial or industrial districts Vacant Parcels = [AHBF X Floor Area] X .75 Residential Developments in Commercial or Industrial Areas = [AHBF X Floor Area of Project Dedicated to Residential Use] X .50 Off-site construction option or land dedication, if granted, must be within .25 mile radius of the market-rate units. Off-site option requires 25% more affordable housing in some cases	Up to 35% by state law**	Height Bonus (10% in non-residential districts; more limited in residential) Increase in FAR by .5 times the FAR dedicated to affordable housing in non-residential districts Increase in FAR by 25% in residential districts (total bonus from state and local bonuses cannot exceed 50%) Flexible Zoning/Development Standards – reduced parking, variances/reductions to side year, front, or rear setbacks or parcel coverage requirements, greater allowable floor area or floor area discounts in some districts
Stamford, Connecticut (2002)	347 Affordable Units Constructed; 400 More Planned; Over $6 million in fee in lieu funds collected; Over 2,600 total units developed since 2002	Threshold: Multi-family Housing generally determined by Specific Zoning Districts Income Target: 30-60% AMI	10% - 12% (increases with density bonuses granted)	Fee in lieu = %s of the median income in Stamford depending on the kind of affordable unit that the fee-in-lieu applies to 25% of AMI – fee in lieu can be up to 240% of the median income in Stamford 50% of AMI – up to 145% of the median income in Stamford 60% of AMI – up to 110% of the median income in Stamford Must apply for city approval to use the fee-in-lieu No other off-site options	Yes – depends on the zoning district/portion of bonus units must be affordable	Height, setback, and lot size requirements may be altered in specific situations to accommodate the density bonus
Tallahassee, Florida (2005)	Approx. 300 Affordable Units Planned	Threshold: 50 or more units (in Planned Developments, in Developments of Regional Impact (DRIs) and in census tracts where the median income is higher than the citywide median income) Income Targets: 70% AMI for affordable ownership or in certain districts, option to do 100% AMI for workforce rental housing (based off high HOME rents)	10% Affordable Ownership or in certain districts, option to do 15% Workforce Rental	$10,000 to $25,000 (depending on the price of the market rate units) 110% of Affordable Sales Price = $10,000 Fee Per Required Unit 110-175% = $15,000 Fee Per Unit 175-225% = $20,000 Fee Per Unit 225% or Greater = $25,000 Fee Per Unit	25% (affordable % requirement not counted among bonus units)	Expedited review, design flexibility (mixing housing types, reduced buffering and screening, reduced setbacks and lot sizes), transportation currency exemption, other deviations to save cost can be suggested

**All California programs (and local jurisdictions for that matter) must offer a density bonus of up to 35% as well as additional incentives to all developers who include affordable housing in new developments. The amount of the density bonus and the number of additional incentives are dependent upon the % of affordable units provided and the level of affordability of those units (higher density bonus and more incentives for a higher % of affordable units serving lower income levels). But, developers do not always request this bonus because of local opposition and because the size of the bonus is not sufficient in some markets (given high land costs) given the political effort that must be expended to obtain it. Many communities resist granting the bonus and only grant it when hard-pressed by developers.

Click here for image

Exhibit B

Examples of Developer Incentives/Cost Offsets From Inclusionary Housing Programs Across the U.S.

Boston, Massachusetts — **-None**

Boulder, Colorado — **-Exemption from the Housing Excise Tax** for permanently affordable units only
-Waiver of development excise taxes (but only if providing more than the baseline requirements of 20% affordable units)
-Exemption from Growth Management requirements (but only if providing at least 35% permanently affordable units)

Brentwood, — **Developer must apply for incentives and must show**

California	**that they are necessary to the financial feasibility of the development** **-Density bonus** of 9% above the midpoint of the density range established in the general plan zoning code (no affordability requirement on density units; cumulative density may not exceed the maximum density set forth in the city's general plan or zoning code) **-State Density Bonus Requirements - Up to 35% Density Bonus** (must be included with above density bonus)* **-Fee Deferrals** (processing fee and impact fees) **-Flexible Zoning/Design Standards** - reduced lots sizes, setback requirements, open space requirements, landscaping requirements, interior amenities, parking requirements; height restriction waivers **-Flexible use standards** - ability to construct duplexes or triplexes on corner lots in SF areas; **-Expedited permitting** **-Direct financial assistance** - loan or grant from collected housing trust fund dollars ***but only to those that exceed minimum affordable unit counts required*** ***Despite the long list provided above, Brentwood, by its own admission, allocates cost offsets quite carefully and conservatively and views the affordable housing requirement as a standard cost of doing business in the community.***
Brookline, Massachusetts	**-Parking reduction** - affordable units only require 1 parking space, instead of 2 parking spaces **(as of right)** **-Different materials and different finishes in affordable units**, but materials still must be approved by city
Cambridge,	**-Density bonus (30%)**

Massachusetts	(15% market-rate, 15% affordable) **-Increased FAR for affordable** units (as of right) **-Decreased minimum lot area requirements** (such that two additional dwelling units per lot are permitted for each additional affordable unit) (as of right) **-No variances required** to construct affordable units (as of right)
Carlsbad, California	**No formal offsets** - developers may apply for assistance; city may provide density bonuses on a case-by-case basis.
Chapel Hill, North Carolina	**None (expedited process on the books but never used)** -fee waivers and density bonuses for 100% affordable developments
Chicago, Illinois	**CPAN** - marketing assistance, landscaping assistance, purchase price assistance, cash subsidy (a density increase can be provided in some cases if negotiated with the developer) **Affordable Requirements Ordinance (ARO)** - implicit in requirement - 1) city land; 2) cash subsidy; 3) increase in zoning density or change from non-residential to residential; and 4) PUD. **Downtown Density Bonus** - Additional Floor Area (25% of which must be dedicated to affordable housing) **(as of right)**
Davidson, North Carolina	**None**
Davis, California	**-State Density Bonus** up to 35% density bonus* **-Local Density Bonus -** one-for-one density bonus for on-site affordable units **(as of right)** -one-for-one density bonus for donation of land (based on 15 units per acre for ownership housing

	and 20 units per acre for rental housing) -bonus units are included in the calculation for % affordable housing **-Flexible Zoning -** relaxed zoning requirements (discretionary - tailored to each project **-Parking reductions** (discretionary - tailored to each project) **-Setback reductions** (discretionary - tailored to each project) **-Expediated/streamlined permitting** (discretionary - tailored) **-Federal, state, and local subsidy dollars** may be used to meet requirements ***Must do a mix of two and three bedroom units to meet the affordable requirements***
Denver, Colorado	**-Cash Subsidy/Fee Reimbursement** - standard per affordable unit reimbursement from the affordable housing special revenue fund up to $ 5,500 per affordable unit built, up to 50% of the total units in the development up to a maximum of $ 250,000 per development (done because Colorado state law prevents the provision of fee waivers) - can obtain a higher cash subsidy - up to $ 10,000 per affordable unit (up to 50% of the units in the development) for units affordable at or below 60% of the AMI **- Density Bonus (10%) but only** for affordable units above the 10% requirement) **-Reduced parking requirement** (**but only** for affordable units above the 10% requirement) - reduction of 10 parking spaces for each additional affordable unit **-Expedited permit process (but only** for affordable units above the 10% requirement)
Fairfax County,	**- Density Bonus** - sliding scale

Virginia	-up to 20% density bonus for 12.5% affordable units -up to 10% density bonus for 6.25% affordable units -density bonus plus parking reduction for mid-rise elevator buildings
Highland Park, Illinois	**As of Right but must submit development plan/ application to City** **-Density Bonus (20%** - one for one) **(As of right)** **-Discretionary Density Bonus (Up to 1.5 to 1)** in planned unit developments **(discretionary)** **-Fee/Tax Waivers**- Waiver of all applicable application fees, building permit fees, plan review fees, inspection fees, sewer and water tap-on fees, demolition permit fees, the demolition tax, and such other development fees and costs which may be imposed by the City **-Reduced interior finishes** on the affordable units **-Reduced gross floor area** in the affordable units
Irvine, California	**Developer must apply to receive any of the offsets** **-Density Bonus** (Up to 35%) (California state law)* **-Reduced parking requirements** **-Reduced fees** **-Reduced park land set-aside requirement** **-Expedited permit processing**
Longmont, Colorado	**-Development Fee Reduction Program** - 20% fee reduction up to 50% (not as of right; $ 2,400 savings per rental unit and $ 5,230 savings per for-sale unit on average) **-Affordable Housing Incentive Program** - only available to developers who go beyond baseline requirements (12-20% set aside at certain income

	levels instead on 10% set aside) ***Expedited Review** ***Density Bonus** ***Flexible Zoning/Development Standards** - lot size and setback reductions, increased density ***Additional fee waivers** (including water/wastewater) - 50-75% for for sale and 25-50% for rental ***Fee Deferrals** ***Marketing Assistance**
Madison, WI	**Developer may request offsets, in the amount of the revenue differential between a development without any IZ units and a development with IZ units, from the Director of the Department of Planning and Development** **- Density Bonus** **- Reduction in Park Development Fees** **- Reduction in park dedication requirements** **- Parking reductions** **-Cash Subsidy** of up to $ 5,000 per affordable unit for for sale units to households at or below 50% AMI and rental units to households at or below 40% AMI (used after other offsets used) **-Cash Subsidy** of up to $2,500 per affordable unit for on-site units in developments with 49 or fewer detached units OR for developments with 4 or more stories and 75% of parking underground (used after other offsets used) **-Additional floor/story in downtown area** **-Additional FAR** **-Mixing multi-family and two-family housing types into single-family developments** (with limitations on concentrations) **-Expedited review** **-Residential development in areas** that currently do not allow it **-Reduced street widths**

	-Can us **state and federal subsidies if** you make units more affordable
Montgomery County, MD	**-Density Bonus** (sliding scale **up to 22%** density bonus) **(as of right)** **-Fee Waivers** **-Flexible Uses** up to 40% attached unit development in detached unit development area **-Decreased minimum lot area requirements** **-10% compatibility allowance**
New York City	**-Density Bonus (33%)** (on top of upzoning already granted in the district) **(as of right)** **-Property Tax Break** (421-A) **Tax-Exempt Bonds and 4% Tax Credits**
Newton, Massachusetts	**-None** -May use federal, state, or local subsidies BUT ONLY IF doing more affordable housing than required, etc.
Sacramento, California	**Apply to Planning Director - all negotiated** **-Density Bonus -** up to 35% density bonus* **-Expedited permit process** **-Fee waivers, reductions, or deferrals** **-Flexible Zoning/Relaxed Development Standards/ Flexible Uses** (e.g. road widths, curbs and gutters, parking, minimum lot size, lot coverage, alternative housing types,) **-Parking Reductions** **-Flexible Uses** ability to develop duplexes, half-plexes, patio homes and second units **-Interior Finish reductions** **-Priority for Subsidies** - local public funding **All must be applied for to the Planning Director
San Diego, California	**Future Urbanizing Area - no offsets** **Citywide Program** - see below **(all negotiated)**

	-Up to 35% density bonus - no local bonus* **-Expedited Permitting** **-Fee Reductions -** reduced sewer and water fees **-Other possible individualized offsets** negotiated on a case by case basis (parking reductions, height, setbacks, etc.) **-Federal and state subsidies** are **but only with** greater affordability or deeper affordability
San Francisco, California	**-Up to 35% density bonus** (not often granted)* **-Fee reductions** on the affordable units **(as of right)**
Santa Fe, New Mexico	**- Density Bonus** (11-16%) **-Fee Waivers** **-Relaxed development standards**
Santa Monica, California	**-Up to a 35% Density Bonus** (State Law)* **-Height Bonus** (10 feet in non-residential district; more limited in residential districts) **-Increase in FAR** in non-residential districts by .5 times the FAR dedicated to affordable housing **-Increase in FAR** in residential districts by 25% (total bonus from state and local bonuses cannot exceed 50%) **-Flexible Zoning/Development Standards -** Reduced parking, variances/reductions to side year, front, or rear setback requirements or parcel coverage requirements, greater allowable floor area or floor area discounts in certain districts
Stamford, Connecticut	**-No offsets** for baseline 10% affordable at 50% AMI **-Density Bonuses for units above 10% affordable** R-5 - 12 units per acre - bonus to 22 units per acre if 1/5 of bonus units are affordable

	R-MF - 20 units per acre - bonus to 40 units per acre if of bonus units are affordable R-H - 60 unit per acre - bonus to 80 units per acre if 1/5 of bonus units are affordable **-Flexible Zoning -** In practice, height, setback, and other zoning requirements **may** also be adjusted by the Zoning Board in conjunction with the density bonuses
State of California - Density Bonus and Other Incentives - only for "on-site" housing	**-Up to a 35% Density Bonus** (As of Right - if the local government cannot demonstrate adverse effects on health safety, or the physical environment that cannot be mitigated) Amount of bonus based upon the % of units dedicated to very low, low-income, and moderate-income households **-Other incentives** - reductions in setbacks and square footage requirements, parking reductions, approval of mixed-use zoning, other incentives or concessions proposed by muni or developer that result in "identifiable, financially sufficient, and actual cost reductions" -Available even for condo conversations -Resistance to granting in some towns/lack of use in others
Tallahassee, Florida	**-Density Bonus (25%)** (affordable % not counted among bonus units) **-Expedited Review** **-Flexible Zoning/Flexible Uses** (mixing housing types, setback and lot size requirements, buffering and screening requirements within the development) **-Transportation concurrency exemption** **-Other deviations** from local cost-imposing requirements can be suggested without a fee

*All California programs (and local jurisdictions for that matter) must offer a density bonus of up to 35% as well as additional incentives to all developers who include affordable housing in new developments. The amount of the density bonus and the number of additional incentives are dependent upon the % of affordable housing provided and the level of affordability of those units (higher density bonus and more incentives are achieved for a higher % of affordable units serving lower income levels). But, developers do not always request this bonus because of local opposition and the size of the bonus in some markets (given high land costs) is not worth the trouble. Many communities resist granting the bonus and only grant when hard-pressed by developers.

Exhibit C

Program Interviews

Sheila Dillon, Boston Redevelopment Authority, Boston, Massachusetts

Cindy Pieropan, Housing Planner, City of Boulder, Colorado

Kwame Reed, Senior Housing Manager, Department of Community Development, Brentwood, California

Francine Price, Housing Development Manager, the Head of the Housing Division within the Department of Planning and Community Development, Brookline, Massachusetts

Chris Cotter, Housing Director, City of Cambridge, Massachusetts

Frank Boensch, Management Analyst, Carlsbad Department of Housing and Redevelopment

Rae Buckley, Housing Planner, Town of Chapel Hill, North Carolina

Danielle Foster, Housing Programs Manager, Planning and Building Department of Davis, California

Jackie Morales-Ferrand, Director, DHCD, City of Denver

Dawn Blobaum, Town Manager, Town of Davidson, North Carolina

Jaimie Ross, Executive Director, 1000 Friends of Florida

Lee Smith, Senior Planner, City of Highland Park, Illinois

Mark Asturias, Housing Manager, Department of Housing Development, Irvine, California

Shawn Hill, Planning Department, Jackson, Wyoming

Kathy Fedler, CDBG and Affordable Housing Coordinator, City of Longmont, Colorado

Barb Constans, Department of Planning and Development, City of Madison, Wisconsin

Lisa C. Schwartz, Senior Planning Specialist, Montgomery County Department of Housing and Community Affairs, Montgomery County, Maryland

Trisha Guditz, Housing Development Coordinator, City of Newton, Massachusetts

Brad Lander, Director, Pratt Center for Community Development, New York City, New York

Chandra Egan, Inclusionary Housing Program Manager, Mayor's Office of Housing, San Francisco, California

Doug Shoemaker, Deputy Director, City of San Francisco Mayor's Office of Housing.

Greg Sandlund, Assistant Planner, Planning Department, Sacramento, California

Peter Armstrong, Project Manager, San Diego Planning Commission, San Diego, California

Norman Cole, Principal Planner, City of Stamford, Connecticut

James Kemper, Senior Administrative Analyst, Department of Housing and Redevelopment, Santa Monica, California

Deepika Andavarapu, Planner, City of Tallahassee, Florida

Appendix D

Feasibility Studies

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NEW JERSEY COUNCIL ON AFFORDABLE HOUSING TASK 3 - COMPENSATORY BENEFITS TO DEVELOPERS FOR PROVISION OF AFFORDABLE HOUSING

Final Report Submitted To:

New Jersey Council on Affordable Housing

101 South Broad Street

Trenton NJ 08625

Final Report Submitted By:

Econsult Corporation

3600 Market Street 6th Floor

Philadelphia PA 19104

FINAL- December 11, 2007

TABLE OF CONTENTS

EXECUTIVE SUMMARY

In its review of New Jersey Council on Affordable Housing's (COAH) Third Round substantive and procedural rules and regulations, the Appellate Division of the Superior Court of New Jersey identified, among other challenges, issues related to the mechanisms municipalities have to work with towards fulfilling affordable housing requirements. Specifically, it determined that **the ultimate responsibility for establishing a real estate environment conducive to meeting affordable housing needs rests with the municipality through its land use ordinances,** and that therefore **municipalities must offer development incentives sufficient to generate a realistic opportunity for developers to produce new affordable housing.**

To the extent that the provision of affordable housing is deemed an appropriate public interest, **governments have a number of mechanisms at their disposal to actively encourage greater production within their jurisdictions.** <1> These tools include offering density bonuses, easing construction-related requirements, and/or providing financial subsidies.

Therefore, we can generate an illustrative pro forma statement to determine the effect on developer profitability of the affordable housing requirement, and then evaluate a variety of types and scales of compensatory benefits. Thus, we can solve for the various incentive amounts necessary to offset the cost of the affordable housing requirement, and can then compare that scale of incentives with levels that municipalities might choose to offer, **to determine if such levels can be considered as sufficient.**

Importantly, we assume that affordable units are allowed to differ in size from market units. According to an extensive literature and best practices review conducted by Applegate and Thorne-Thomsen, the most common sizing of affordable units is two units on the same footprint as one market unit, which would result in an approximate per-unit construction cost reduction of 40 percent.

From there, the incentive levels required to offset the affordable housing requirement depend on the set-aside ratio and on the affordability level of the affordable units: the more affordable units required, and the more deeply affordable they must be, the more offsetting incentives that are needed. For the purposes of this analysis, we use base assumptions of a 20 percent set-aside ratio (i.e. one affordable unit among five total units, or one for every four market units) and a price that is affordable to someone making 55 percent of median household income.

Based on these assumptions and scenarios, we can determine the scale of incentives required to compensate for the affordable housing requirement. For example, **assuming a "one for one" density bonus, we find that a 4.3 percent construction cost reduction on all units is needed** if all additional units are market units.

The results from these scenarios inform our study in the following ways:

-- First, our illustrative examples calculate what is necessary to completely *offset the cost of the affordable housing requirement*; certainly, in the marketplace, there are situations in which an incentive does not need to completely offset the cost of the affordable housing requirement for it to be effective in inducing developers to build.

-- Second, these illustrative examples utilize very aggressive assumptions related to the provision of affordable housing: the set-aside ratio and the affordability level. These are policy choices that can be made, but it must be stated that *requiring more affordable units and/or requiring that those units are more deeply affordable necessarily means higher levels of incentives are needed to offset the associated costs.*

-- Third, in fact many government entities that have instituted affordable housing requirements are located in *extremely attractive real estate markets*, and thus developers are often so motivated to build there that they are willing to bear the additional cost of the affordable housing requirement with zero incentives, density-related or otherwise.

-- Fourth, many affordable housing requirement programs encourage the *mixing of incentive types*. Thus, while density bonuses alone might require fairly high density increases, density bonuses in conjunction with construction cost reductions require more reasonable density increases.

Of course, **municipalities need not limit themselves to the minimum affordable housing requirements**. A municipality might be motivated to go beyond minimum affordable housing requirements if COAH gives additional credit for doing so, and thus understanding the scale of incentives required to offset requirements at different set-aside ratios and affordability levels can provide some guidance on such trade-offs.

Importantly, the results above assume that land costs represent 20 percent of total project costs. The higher land costs are as a percentage of total project costs, the lower the density bonus that is required, since the mechanism by which additional market units offset the cost of building affordable units is by allowing the developer to spread the project's fixed costs (i.e. land costs) over more units. Thus, higher fixed costs as a percentage of total project costs mean that

there is a lot to be gained back by the developer in spreading out those higher fixed costs over additional market units.

Therefore, **higher density bonuses are needed in lower-income areas, while lower density bonuses are needed in higher-income areas**. This reconciles with national findings: in many cases, higher-income areas can institute affordable requirements with little or no offset density bonus, while lower-income areas often struggle to enable the construction of market units, and thus imposing an affordable requirement would require high levels of offsetting incentives to induce development.

Non-residential construction also generates an affordable housing obligation, but housing units cannot always be included at the same site, and non-residential developers may not have the expertise or desire to build residential units. Non-residential developers have heretofore then paid a development fee instead of directly bearing the cost of building affordable units. If intended to completely pay for the cost of building affordable units, the development fee would be somewhere between 2.8 percent and 10.1 percent, based on building type (see Figure E.1).

Figure E.1 – Cost of Affordable Housing as a Function of Non-Residential Construction

Building Type	Office	Retail	Factory	Storage	Manuf	Theater	Restaurant	Library	Arena	Stadium	K-12	Hospital	Hotel
Sample # SF in Project	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000
Average $ Constr Cost/SF	$ 112.5	$ 157.6	$ 94.8	$ 84.8	$ 159.4	$ 151.7	$ 127.3	$ 134.6	$ 131.3	$ 154.3	$ 152.2	$ 306.5	$ 233.7
Total Sample Project Cost	$ 11,252,510	$ 15,761,960	$ 9,477,960	$ 8,479,500	$ 15,944,850	$ 15,170,530	$ 12,727,920	$ 13,459,900	$ 13,131,620	$ 15,434,000	$ 15,218,920	$ 30,648,190	$ 23,367,170
Approx. Project Cost / Market Value	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%
Assessed Value / Market Value	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Sample Project Assessed Value	$ 22,505,020	$ 31,523,920	$ 18,955,920	$ 16,959,000	$ 31,889,700	$ 30,341,060	$ 25,455,840	$ 26,919,800	$ 26,263,240	$ 30,868,000	$ 30,437,840	$ 61,296,380	$ 46,734,340
Task 4 Jobs/1000 Gross SF	2.6	1.6	1.1	1.3	1.4	1.5	2.9	1.5	3.1	2.3	1.6	2.3	1.6
Jobs Created by Project	259.4	156.4	111.7	134.7	143.4	146.4	293.3	147.3	312.8	234.6	156.4	234.6	156.4
Jobs Per Affordable Unit	16	16	16	16	16	16	16	16	16	16	16	16	16
# Affordable Units to be Built	16.2	9.8	7.0	8.4	9.0	9.2	18.3	9.2	19.6	14.7	9.8	14.7	9.8
$ Cost Per Affordable Unit	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735
$ Cost for All Affordable Units	$ 2,200,397	$ 1,326,806	$ 947,719	$ 1,142,528	$ 1,216,239	$ 1,242,106	$ 2,487,762	$ 1,249,636	$ 2,653,613	$ 1,990,210	$ 1,326,806	$ 1,990,210	$ 1,326,806
$ Cost as a % of Assessed Value	9.8%	4.2%	5.0%	6.7%	3.8%	4.1%	9.8%	4.6%	10.1%	6.4%	4.4%	3.2%	2.8%

Source: Econsult Corporation

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1.0 CONTEXT

1.1 Court Findings

In its review of New Jersey Council on Affordable Housing's (COAH) Third Round substantive and procedural rules and regulations, the Appellate Division of the New Jersey identified three general groups of challenges to COAH's Third Round rules:

-- Calculation issues,

-- Allocation issues, and

-- Compliance mechanisms.

Tasks 1, 2 and 4 of our work for COAH address various calculation and allocation issues discussed by the Court; in other words, they are concerned with estimating the total amount of affordable housing obligations, and its distribution across municipalities. Task 3, on the other hand, primarily deals with rulings on two specific issues in the third category, both related to **the mechanisms municipalities have to work with towards fulfilling affordable housing requirements:**

-- The Court's decision to invalidate "the regulations that permit municipalities to provide affordable housing without offsetting benefits" to the developers,

-- The Court's decision to invalidate the rules governing the "payment in lieu of" provision where municipalities negotiated with developers over the payment amount.

Throughout the Court's decision, and particularly applicable to the compliance mechanisms component of the regulations, is the determination that **the ultimate responsibility for establishing a real estate environment conducive to meeting affordable housing needs rests with the municipality through its land use ordinances.**

Consequently, in its findings on the validity or invalidity of various "compliance mechanisms", the Court ordered that COAH develop new regulations that require municipalities to provide sufficient financial incentives or regulatory relief to developers to make sure the provision of affordable housing in the jurisdiction is economically viable:

Permitting municipalities to demand that developers build affordable housing without any additional incentives provides municipalities with an effective tool to exclude the poor by combining an affordable housing requirement with large-lot zoning and excessive demands for compensating fees in lieu of providing such housing. Under N.J.A.C. 5:94-4.4, municipalities need not consider the economic feasibility of complying with the ordinance. Yet, this is counter to the very definition of realistic opportunity adopted by COAH. Economics get factored into the equation only when the municipality exercises its right to require a developer to provide more than one affordable unit for every eight market-rate units or more than one unit for every twenty-five jobs. A regulatory regime that relies on developers to incur the uncompensated expense of providing affordable housing is unlikely to result in municipal zoning ordinances that make it realistically probable that the statewide need for affordable housing can be met. <2>

Thus, the Court stated that COAH is responsible for **reviewing proposed zoning plans to determine whether the plan creates a "realistic opportunity" for the construction of the municipality's fair share of affordable housing.** Furthermore, the Court explicitly requires that incentives be offered, and that blanket affordable housing requirements without sufficient economic incentives would violate the Mt. Laurel doctrine:

We conclude that the Mount Laurel doctrine, as articulated in *Mount Laurel* II and *Toll Bros.*, and as codified by the FHA, requires municipalities to provide incentives to developers to construct affordable housing. Land use ordinances requiring all developers to provide some affordable housing conflict with the essence of the Mount Laurel doctrine, which requires that municipal land use ordinances create a realistic opportunity.

Implicit in this language is the notion of **each municipality offering "sufficient" incentives - also known as compensatory benefits - to developers in order to compensate for additional costs imposed by the affordable housing requirements.** This is particularly important since the primary Round Three COAH "growth share" ties each municipality's affordable housing obligation to its expected future real estate development.

Such a mandate, requiring municipalities to provide incentives as necessary to achieve their fair share housing obligation, begs the question, "What constitutes 'sufficient'?" This will be the focus of much of this Task 3 report. However, if the Court calls for municipalities to provide incentives to developers in order to satisfy their fair share obligations, one must first ask an even more basic question: "Do incentives work in this case?" In other words, there is some question as to whether incentives would have any effect on the additional provision of affordable housing.

We will tackle that important question shortly. Assuming for a moment that incentives do in fact work, one must then determine how this court mandate gets translated into COAH's regulatory language. This is, as stated above, the primary objective of this report: to satisfy the requirements of the Mount Laurel decision, municipalities must offer sufficient incentives to create a realistic opportunity for affordable housing units to be built; and to properly certify participating municipalities, **COAH must then determine what constitutes a "sufficient" set of incentives.**

This report is structured to provide COAH with an understanding of sufficient incentives for the purposes of its ongoing substantive certification role, as well as with some guidance for its rulemaking. Specifically, we begin here in **Section 1** with the necessary legal and economic context from which we can more adequately cover the subject of incentives for affordable housing. **Section 2** provides an inventory of the wide range of public policy tools that municipalities have at their disposal to induce affordable housing provision. **Section 3** provides illustrative pro forma analyses to demonstrate to COAH the varying impacts of different incentives schemes. Finally, **Section 4** returns to the key questions at hand and summarizes the first three sections to the end of providing specific guidance on regulatory language that can fulfill the Court's requirements.

1.2 Basic Methods for Providing Affordable Housing

It is important, when discussing incentives for providing affordable housing, to unpack the mechanics by which affordable housing is brought to the marketplace. It is important to note that, absent direct action, affordable housing can be and is in fact created on its own, through normal residential filtering, whereby previously unaffordable houses lose value over time until they become affordable, the previous owners having vacated the houses by trading up to more valuable ones. <3>

Direct approaches to bringing affordable housing to market include the rehabilitation of existing substandard housing stock, conversion of non-residential buildings into affordable housing units (for sale or rental), group homes or accessory senior apartments, and buy-downs of existing housing stock with conditions on future transfers. In addition, new construction can provide housing for low and moderate income households. This new construction can be provided in the following ways:

-- By the developer on the same site as market rate units - this is known as "inclusionary housing," and the ratio of affordable units to market rate units is usually a pre-determined, "set-aside" proportion;

-- By the developer (or another private developer) on a different development site from the market rate units but still in the same municipality;

-- By the local government on a different development site from the market rate units but still within the municipality - this is done by utilizing the developer fees or "payments in lieu of" that are paid by the developer; or

-- Outside of the municipality altogether - as determined by a Regional Contribution Agreement (RCA).

Here we briefly examine these basic methods, and comment on the types of incentives that could influence them. More detailed examination of various parts of these topics can be found in subsequent sections of this report.

Inclusionary Development Set-Asides

Housing "set-asides" are a fairly common method of encouraging or requiring affordable housing. Under set-aside programs, developers are required to build a portion of new or rehabilitated units that are affordable to people with low to moderate income levels. Developers can alternatively choose to pay a per-unit fee to relieve themselves of this obligation. In New Jersey, inclusionary developments are not charged developer fees.

To offer a couple of out-of-state examples, in Montgomery County, Maryland, between 12.5% and 15% of the houses in new subdivisions of 20 or more units must be moderately priced dwelling units (in accordance with the County's Moderately Priced Housing Law of 1974). This requirement has generated over 10,000 units of affordable for-sale and rental housing. <4>

The Department of Neighborhood Development in Boston requires rental housing developments with 10 or more units to include a minimum set-aside of 10% of the rental housing units for homeless families and/or individuals with an income no greater than 30% of the median income for the area. <5> Developers have the choice of setting aside units that meet this requirement, or paying a $ 52,000 per unit fee into the trust fund.

Set-asides on these orders of magnitude have been part of the established procedure in New Jersey for many years. However, inclusionary development is still viewed in many communities as creating too much density, generating excessive infrastructure, and increasing local government costs.

Off-Site Provision within Municipality (by Private Developers): Using Payments in Lieu

A developer may provide the required affordable housing units at a different location than its market rate housing development, but still within the municipality. In this case, municipalities may charge payments in lieu of construction, the proceeds of which can then be used for the construction of affordable housing units elsewhere in the municipality.

The Court declared invalid COAH's practice of allowing municipalities to negotiate "payments in lieu of" amounts for not directly providing affordable units, noting that both municipalities and developers can have incentives to minimize the number of affordable housing units and therefore have a tendency to under-price these payment levels. COAH proceeded to modify its regulations regarding payments in lieu (N.J.A.C. 5:94-4.4) by developing three options for municipalities to create "standard guidelines" for pricing the payments in lieu:

-- Cost based on site development

-- Cost based on "Buy Down" program

-- A hybrid of both approaches

Regional Contribution Agreements (RCA)

Regional Contribution Agreements (RCA) are, in a sense, inter-municipal "payment in lieu of" arrangements, whereby payments are made between municipalities, rather than within a municipality, such that affordable housing requirements in one municipality can be transferred to another municipality, in exchange for a payment.

1.3 Do Incentives Work to Generate More Affordable Housing?

Of significant and indeed seminal interest to this whole discussion is the basic question posed above: "Will incentives work?" That is, will the existence of incentives lead to the provision of more affordable housing units? Since the Court has ordered municipalities to provide necessary incentives in order to meet Mount Laurel fair share objectives, such a question is an important one to address.

Fundamentally, **the introduction of inclusionary or other affordable housing requirements tends to impose a cost on development,** because of the requirement to build a certain portion of housing units that will be unprofitable (i.e. construction and other costs will be higher than the sales price or the ongoing rental revenue). Such a requirement would require developers to cross-subsidize the affordable units with profits from the market rate units, thereby lowering overall profitability. If that inclusionary requirement is universal, the drag on profits will make the land upon which to develop less valuable, thus lowering demand for land, and hence land values for any locations where housing could be built. <6>

Lowering land values, as long as prices do not fall below those associated with the next-best use of the particular parcel, still allows the profitable production of affordable housing. In this scenario, all things being equal, developers can still make a profit, because the additional cost of building affordable units is somewhat or even totally offset by lower land acquisition costs. Meanwhile, those who need affordable housing, and the groups that advocate for them, win because the supply of affordable housing increases. Landowners, on the other hand, lose because they receive less from the sale of their land. <7>

In the reverse direction, **the introduction of offsetting incentives, or compensatory benefits, tends to increase the price of land** back to its original level prior to the affordable housing requirement, <8> because it makes developing on that land more profitable and thus increases its value. To the extent that the supply of developable land is fixed (in economic terms, "inelastic," or alternatively, from the perspective of a typical supply and demand curve, a completely vertical supply curve), it can be argued that any incentive offered to developers will not in fact lead to new affordable housing development, but will instead be fully capitalized <9> into the price of the land, such that there is no net incentive to be gained by the developer. In such a scenario, only the landowner wins.

On the other hand, if the supply of developable land is not fixed (i.e. it is "elastic"), then incentives may indeed generate more production, and not result in as much or any price appreciation. This is because when the supply of developable land cannot change, the marketplace's only possible response to the increased attractiveness of the land is increased prices, as developers are now willing to pay more for the right to develop the land; but when the supply of developable land is not fixed, the marketplace can respond to the increased attractiveness of land by adding more land to the marketplace.

In fact, it is possible for land supply to go up or down, by converting farmland into developable space or by setting aside previously developable land as open space, to give but two examples. Thus, if the supply of developable land is not totally fixed, incentives will tend to increase land prices, but not so much as to completely offset the benefit of the incentive to the developer. As a result, incentives will work to induce provision of affordable housing. Empirically, we have seen that **economic incentives in the real estate market have had demonstrable positive effects on production.** <10> This suggests that land supply is not perfectly elastic, and that incentives are not fully capitalized into the price of land, which would render them completely ineffective, but in fact do change the development equation so as to induce more construction than would have otherwise occurred. <11>

In principle, basic supply and demand theory would argue that the net effect of the introduction first of an affordable housing requirement and then of offsetting incentives would be a price of land and a quantity of development that is the same as the status quo before these changes. Landowners would neither gain nor lose, and developers would be able to clear their originally intended profit levels.

1.4 Compliance Issues Raised by the Court

Overall, the Court, and most of those who have commented on its findings, emphasize one key point: **the responsibility to achieve fair share of affordable housing requirements rests with each municipality, and not with private developers or the State**. Further, a literal interpretation of the requirement would suggest that each municipality must

offer "sufficient" incentives to produce its fair share of affordable housing.

Necessarily, then, COAH is seeking guidance in determining what constitutes a "sufficient" set of incentives. Unpacking this notion of "sufficiency" is the main objective of this report, and is the overarching topic of all of the following sections. These subsequent sections will also address some important sub-topics related to the overall topic:

-- Is there such a thing as a presumptive level of incentives that can be considered sufficient, and if so, what is that level? <12>

-- Should incentive levels differ across COAH regions?

-- Should incentive levels differ between sales and rentals?

-- Should incentive levels differ between new construction and rehabilitation?

-- How should COAH deal with affordable housing requirements generated by increases in employment resulting from new non-residential construction?

-- How should COAH deal with calls to expand the base of affordable housing to account for even lower-income households (also known as "affordability deepening")?

-- How should COAH reconfigure its "payments in lieu of" regulations?

All of these sub-topics will be addressed indirectly in Sections 2 and 3. They will then be directly discussed in Section 4, as we summarize our findings from Sections 1, 2, and 3, and provide guidance to COAH on regulatory language moving forward.

2.0 TAXONOMY OF DEVELOPMENT INCENTIVES

2.1 Overview of Government Interventions

To the extent that the provision of affordable housing is deemed an appropriate public interest, **city, county, and state governments have a number of mechanisms at their disposal to actively encourage greater production within their jurisdictions.** These tools include incentives for both new construction and the substantial rehabilitation of existing structures.

We begin this section by discussing these mechanisms as a unit, from a theoretical standpoint. Then we describe some specific sets of tools and their various manifestations. In parallel, **an extensive literature and best practices review was conducted by Applegate and Thorne-Thomsen to inventory these various mechanisms, and to highlight their use and effectiveness around the country.** The Applegate and Thorne-Thomsen report has been delivered in conjunction with this study, and is largely in agreement with our findings and recommendations here.

Underlying such public policy actions are two important economic assumptions. First, the use of subsidies acknowledges that **an insufficient amount of provision would take place in the free market,** and that incentives are needed to induce new private investment or reinvestment. Second, as stated before, it must be true that the introduction of incentives will actually have such an effect, rather than simply driving up the market price of developable land.

It is important to note that **affordable housing regulations at the local level are fundamentally different from statewide efforts**. The main problem concerning affordable housing in New Jersey, as identified by the original Mount Laurel decision by the Supreme Court of New Jersey, is the variation across, not within, jurisdictions. Most affordable

housing incentive programs identified during our national literature review were, in contrast, initiated at the local level, whereby municipalities sought to remedy the variation within their jurisdictions.

The "fair-share housing requirement" can be viewed as a tax or an additional cost on real estate development in any jurisdiction, all else equal. The ability of a developer to bear this additional cost burden is a function of many variables, but it is clear that, all else equal, the affordable housing inclusion requirement itself will discourage investment and result in fewer housing units produced. <13>

As a result, **many municipalities look to offer offsetting incentives, or compensatory benefits, to developers, to counteract the effect of the affordable housing obligation**. Broadly, these incentives fall into three categories:

1. Easing density and density-related restrictions;

2. Easing non-density-related regulations or requirements; and/or

3. Providing direct or indirect fiscal subsidies.

The first category of incentives allows more units to be built than would be otherwise, offsetting the reduced profit margins by enabling higher sales volumes. The second typically reduces the production cost of whatever is being built, restoring previous profit margins for developers. The third can influence either sales numbers (demand side) or production costs (supply side).

These three avenues are not mutually exclusive, and some combination of approaches can be and are utilized in New Jersey and throughout the country. While different municipalities use different types of development incentives based on unique characteristics and regional preferences, density-related incentives appear to be the most common.

Mechanically, these incentives are made available to developers via land use regulations such as zoning. This is important to note, because the underlying basis for the Mount Laurel court decision and the policy action that has resulted from it (including the creation of COAH itself) was and remains **the effects of exclusionary zoning on the distribution of low- and moderate-income households in the state**.

2.2 Easing Density and Density-Related Restrictions

Density-related zoning and regulations are the primary means of controlling land use in the US. In virtually all cases, **density restrictions place limits on the ability of owners and developers to use their private property however they see fit**. These restrictions tend to reduce the value of the land, but that reduction is offset by a greater, public purpose. <14>

Local jurisdictions have long known that restricting land use alternatives can keep property values high by artificially reducing the supply of land for new residential development (monopoly power), by increasing the quality of the land by keeping out uses and users that are perceived as less attractive, and by minimizing the cost of providing public services such as education. Combined, these efforts take the form of exclusionary zoning, and the New Jersey Fair Housing Act is a court-mandated response that offers an antidote to exclusionary zoning and its success at keeping affordable housing out of certain jurisdictions.

For any given level of restrictive land use zoning, there are a number of ways a local jurisdiction may ease those restrictions, thereby adding value to certain land assets. These include a variety of incentives that are generically referred to as a "**density bonus**," defined as:

The density bonus is a land use incentive that allows the developer to construct more units than would otherwise be

allowed in a specified residential zone in exchange for the provision of affordable housing units. The assumption is that with additional units the developer is able to achieve a higher profit level on the housing development. When density is increased, the fixed costs per unit are generally lower, since the land prices, soft costs, and foundation costs can be amortized over more units.

A density bonus could be used as an incentive for increasing the production of affordable housing units. Various restrictions may apply, such as the income level at which the units must be affordable, the time period when the "bonus" units must be developed, and design standards requiring affordable units to appear similar to the market-rate units. <15>

A density bonus can take various forms, of which the first in this list is most common:

-- *Increased number of units per acre*

This means that for every affordable unit that a developer promises to build, he or she can build a calculated number of market rate units greater than would be allowed otherwise in the current zoning designation.

-- *Reduced minimum building separation requirements*

Eligible projects can construct buildings closer together than would normally be allowed, to allow for more units to be built.

-- *Increased Floor Area Ratio (FAR)*

The FAR refers to the total building square footage (building area) divided by the site size square footage (site area). Municipalities can increase the ratio to allow the developer more flexibility in their building design.

-- *Increased maximum lot coverage ratios*

Lot coverage refers to the percentage of a lot occupied by structures (buildings and driveways). Increasing the maximum lot ratio increases the land area that can be developed.

-- *Relaxed setback requirements*

The setback line usually refers to the distance from the public right of way line along a street, alley, sidewalk, etc. or the distance from the rear or side property line. Reducing the setback therefore increases the availability of land for development.

-- *Increased building height or mass allowances*

Increasing building height or mass allowances allow for more flexibility for developers in their building design, and also allow for additional and/or larger units to be built.

-- *Reduced minimum unit size*

Reducing unit size and lot coverage requirements allows developers to build smaller and more affordable units, relative to market rate units, by reducing construction and land costs. Many programs allow unit size reduction while establishing minimum sizes.

In the first of these incentives, a municipality allows a certain percentage more units to be built in exchange for a certain

percentage of affordable units. If a developer is required to have 10% of a project's units be affordable, and is allowed to build 10% more total units as a result, that is considered a "1 to 1" density bonus. Chicago, Cambridge, and Stamford are three cities that offer such an offsetting incentive.

The other incentives are a form of zoning flexibility, whereby other means of "boxing in" a development are relaxed or removed altogether, thus achieving the same results as the straight density bonus. San Diego CA, Madison WI, and Tallahassee FL are three cities that offer such zoning flexibility.

The key here is that easing density restrictions is, for most municipalities, the most direct and effective incentive to creating a more attractive real estate investment environment. These restrictions act as a deterrent to investors, and simply by allowing greater flexibility and/or increasing the amount that can be built, the land can be made more attractive to real estate investors, as will be borne out in the pro forma analysis below. <16>

2.3 Easing Non-Density-Related Regulations or Requirements

Local governments also regulate housing development by imposing restrictions or additional requirements on new supply or rehabilitated housing stock. Essentially, each of these restrictions increases the production cost of housing (whether new or rehabilitation)

-- *Relaxed design and development standards*

These allow the developer increased flexibility and lower costs. They include reducing landscaping requirements or including fewer amenities for the affordable houses (compared with market-priced housing).

-- *Expedited review and permit processing*

This involves streamlining the process for development in order to reduce developers' carrying costs. These can include any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

-- *Impact fee deferrals or waivers*

Impact fees are fees that are imposed on new constructions to pay for the expansion of new services and infrastructure, such as *fire stations, police stations, sewer and water supply systems, parks, and libraries.* Waving or deferring these fees can result in significant savings for developers.

-- *Building fee deferrals or waivers*

Building fees are for new construction, additions, alterations and repairs, and are based on the constructed area. Local governments can waive all or part of the fees for qualifying projects.

-- *Relaxed parking requirements*

Reducing the requirements for parking spaces per unit reduces overall costs and increases land efficiency and housing units per site. Measures can include reducing the minimum number or size of spaces, and allowing underground, structured, or tandem parking. Parking requirements can be controlled by linking to the number of bedrooms per unit (For example, 1.35 spaces for one-bedrooms, and 1.5 spaces for 2 bedrooms).

-- *Reduced building standards*

To relieve costly requirements that do not compromise safety, developers of affordable housing developments can be allowed significant flexibility in building standards. This allows for alternative quality levels in the development.

-- *Alternative housing types*

These can include rental apartments and condominiums, townhouses, townhouse/duplex units embedded in the bases of larger buildings, studios, and live-work units (accommodation that is specifically designed to enable both residential and business use). A mixture of types accommodates various household sizes and configurations, a range of income levels, and diversity of residents.

-- *Street Right-of-Way Reduction*

To reduce the costs of development (and to increase the available area for housing units), the minimum width of streets and drainage infrastructure can be decreased.

What all of these incentives have in common is that they lower the cost of development for the developer, thus offsetting the cost of building affordable units. Many incentive programs do not allow actions that allow for a lower-quality product to be built, claiming that it defeats the purpose of an inclusionary housing policy. Nevertheless, a number of cities take this approach in making affordable housing work for developers, including Santa Monica CA (parking reductions), Chicago IL (reduced interior finishes), and Chapel Hill NC (expedited review process).

2.4 Providing Direct or Indirect Fiscal Subsidies

A third way that local jurisdictions can encourage certain types of development is via **direct or indirect fiscal subsidies**. In other words, rather than allowing the developer to build more units (and thus generate more revenue) or avoid some requirements (and thus lower their costs), governments can offset the cost of building affordable housing units by simply reimbursing the cost, through a variety of mechanisms:

-- *Selected Tax Abatement*

The abatement refers to a reduction or an exemption of local tax (typically property tax) usually for a certain number of years and is based on the number of low-income units. This means that developers who develop in eligible distressed areas can receive property tax abatement, providing significant savings.

-- *Tax Increment Financing (TIF)*

TIF is a tool to use future gains in taxes to finance the current improvements that will create those gains. Bonds are issued to pay for planned improvements, which in turn encourage private development. Private development raises site value and creates more taxable property, which increases tax revenues (the "tax increment"). This increased revenue is then used to finance the debt issued. TIF is designed to channel funding toward improvements in distressed or underdeveloped areas where development would not otherwise occur.

-- *Utility hook up or other impact cost grants*

Grants that support post-construction infrastructure needs can be made available to developers for completed affordable housing developments. Utility hook-up fees can run into several thousand dollars per unit, and therefore the grants can have a significant impact on the viability of a project.

-- *Subsidized development loans*

Below-market loans can be made available to the developer to lower the purchase price of a unit or the rent, ensuring affordable housing.

-- *Construction or permanent financing loan guarantees*

Loan guarantees, including HUD Section 108, can be provided to developers as a source of financing for affordable housing projects in eligible communities.

-- *Contributions of land or land price write downs for public land*

This involves the contribution of land to an affordable housing project, or the sale of land at a below-market price to developers of an affordable housing project.

-- *Grants/loans for site assembly, demolition or other site preparation costs*

Often federal grants administered by the city, these provide funds for the pre-construction costs associated with a development and are open to developers who plan to construct affordable housing and meet the specific requirements.

-- *Credit enhancement for development financing*

In exchange for setting aside affordable units within the project, local governments can provide credit enhancements to reduce financing costs for developers.

-- *Tax Increment Set-Aside (TISA) programs*

TIF set-asides for affordable housing are a method of ensuring funding for affordable housing. These programs require local municipalities to spend a minimum percentage of their total tax increment revenue on affordable housing in TIF districts or areas designated as redevelopment areas. Cities such as Portland, Oregon, and Madison, Wisconsin, as well as the State of California, have adopted TIF set-asides to varying degrees. Each area also has differing guidelines on how the funds should be spent.

Since 1976, California law has required that a minimum of 20% of the redevelopment tax increment must be set-aside for "increasing, improving, and preserving the community's supply of low and moderate-income housing". <17> Almost $ 100,000,000 in TISA funds was expended in the Bay Area alone during FY 1996-97. <18>

The City of Madison requires a set-aside for the development of affordable housing of 10% of the estimated district-wide increment in TIF districts with residential areas. Madison's guidelines for the TIF set-asides include confirmation that if not for the TIF funds the project would not occur; a $ 25,000 maximum per-unit subsidy in rehab assistance or $ 45,000 for development of new units (with an additional $ 5,000 per unit available when necessary for projects to provide for energy conservation or lead paint hazard reduction efforts etc.); and a minimum requirement of 85% of TIF funds to be used for hard costs, such as construction costs, soils/site preparation, landscaping, etc. All TIF set-aside funds must be also be expended within 7 years of the creation of the TIF district. <19>

Portland requires spending of up to 30% of total TIF resources for affordable housing. Portland's Development Commission has also adopted guidelines to ensure that the focus of the TIF set-aside is on implementing two primary City priorities: affordable homeownership in support of families and bridging the minority homeownership gap (Operation HOME), and low-income rental housing for extremely low-income households and formerly homeless individuals and families (the 10-Year Plan to End Homelessness). <20>

Interestingly, there are a number of cases in which municipalities provide no cost offset to go along with their

affordable housing requirement, but do step up with funds if a developer is willing to go beyond those minimum requirements and build additional affordable units. Boulder CO, Carlsbad CA, and Newton MA are three cities that take this approach.

3.0 ILLUSTRATIVE DEVELOPMENT PRO FORMAS

3.1 Basic Development / Investment Decision Making

The key component of the Appellate Division of the Superior Court of New Jersey's recent findings - that municipalities must offer development incentives sufficient to generate a realistic opportunity for developers to produce new affordable housing - potentially expands the role and nature of the New Jersey Council on Affordable Housing's (COAH) review process of plans submitted for substantive certification. To some extent, it may **require COAH to either develop a presumptive level of incentives, and/or determine through its regulations whether a municipality's plan of incentives to developers is sufficient** to induce affordable housing provision (either be inclusionary or off-site) or at least sufficient to create a "realistic opportunity" for affordable housing to be developed.

Both such tasks are complicated by the **wide variation in local markets** across the state. In other words, a presumptive level of incentives and/or the sufficiency of a particular package of compensatory benefits might be best judged on a case-by-case basis. Their sufficiency, after all, is dependent on such changing variables as the national and regional real estate market over time, the relative attractiveness and risk of a location compared to other locations, and the existing densities and related regulations for one municipality versus that of another. This must be balanced against the benefit of predictability and certainty that comes with established thresholds.

Thus, it may be impossible to pre-produce pro forma statements that are encompassing of all permutations or that are extremely accurate. Nevertheless, it is possible to pre-produce some illustrative pro forma statements, which can be used to derive some general principles that are applicable to the notion of "sufficiency," and that can also be used to address some of the important sub-topics that were introduced in Section 1.

3.2 The Economics of Incentives

Our analysis in this section, then, can be used by COAH as a benchmark against which municipal plans can be compared, since these illustrative pro forma statements provide some sense of the impact of various incentives on developer returns. Before we can even set up benchmark assumptions, though, we must revisit a couple of theoretical issues that have been introduced previously and that can now be discussed in the context of these illustrative pro forma statements.

Elasticity of Land Supply

As mentioned earlier, the introduction of an affordable housing requirement would tend to lower the cost of land, while the introduction of offsetting incentives would tend to increase the cost of land. These increases and decreases in land acquisition costs would have a direct effect on a developer's estimated profit.

If the status quo has already capitalized the affordable housing requirement into land prices, but it has not yet capitalized the existence of incentives, it is possible that, if land supply is completely inelastic and markets are perfect, the value of the incentive, rather than restoring the developer's original return to the level prior to the affordable housing requirement, will simply lead to the exact increase in land acquisition cost that offsets the incentive. Under such a scenario, no amount of incentives, no matter how great, restores the developer's original return, and therefore no amount of incentives will induce additional provision of affordable housing units.

However, empirically we note that incentives do in fact work to induce development. Nevertheless, while their value

may not be fully capitalized into land prices, it is equally true that **their value is at least somewhat capitalized into land prices**. One might preliminarily calculate what scale of incentives would be required to offset the cost of the affordable housing requirement, but that scale of incentives might not actually achieve the desired level of affordable housing units, because the introduction of that scale of incentives would increase the land acquisition cost, thus changing the numbers in the pro forma statement.

Discarding equally the possibility that incentives are completely capitalized into land prices and the possibility that they are not at all capitalized into land prices, let us temporarily assume that incentives are exactly 50 percent capitalized into land prices. This is the equivalent of saying that rather than whatever level of incentives one might initially calculate to be needed to offset the cost of the affordable housing requirement, the actual level of incentives needs to be double that, to account for the effect on land acquisition costs of the introduction of the incentives.

In reality, it is not clear what percentage of the value of incentives is actually capitalized into land prices. Affordable housing requirements may result in reduced land prices, which in turn reduces the need for incentives; while offsetting incentives may result in increased land prices, which in turn shrinks the impact of those incentives.

Presumptive Density

As will be detailed below, the goal of the upcoming illustrative development pro forma statements is to calculate the amount of incentives needed to offset the cost of the affordable housing requirement. Many of the incentive types are some form of density bonus; in such cases, the pro forma model can estimate the amount density has to increase to restore a developer's profits to their levels before the introduction of the affordable housing requirement.

What the pro forma model does not focus on is the inherent profitability of a project. Thus, the question of whether a certain density level that is being offered can be deemed sufficient for inducing construction can only be determined if the starting density is known.

Nevertheless, regardless of the original density, is there a notion of "presumptive density"? In other words, is there a density that is innately sufficient to induce affordable housing, regardless of what the current density levels are? Again, the pro forma model, in its current form, cannot answer such a question.

However, intuitively, we can conjecture over whether there exists such a density level. Real estate markets are efficient enough that if a location's zoning allows a relatively high density, and demand to live at that location is high enough that all the allowable units will be sold for a profit, then the price of the land may go up accordingly, such that there is no "extra margin" enjoyed by the developer that would thus enable him to accept losing money by building affordable units.

On the other hand, we know that many parts of the country have successfully integrated affordable housing requirements without prohibitively slowing development. These locations are characterized by high demand and/or natural supply limits (most notably, coastlines), such that there is such a premium to build that developers are willing to "pay the cost" of affordable units for the right to build there. In theory, a dense enough zoning could create such a dynamic, and to the extent that the increased value of the location is not totally captured by higher land prices, there could be sufficient incentive to developers from the density by itself to induce construction even in light of affordable housing requirements.

3.3 Pro Forma Model - Approach

Our goal in generating and annotating an illustrative pro forma statement is to determine the effect on developer profitability of first the affordable housing requirement, and then of a variety of types and scales of compensatory benefits. Specifically, we have constructed a pro forma statement that consists of three sheets:

1. The initial pro forma statement, prior to affordable housing requirement and affordable housing incentives;

2. The pro forma statement, after the affordable housing requirement has been accounted for but prior to the introduction of the affordable housing incentives; and

3. The pro forma statement, after both the affordable housing requirement and the affordable housing incentives have been accounted for.

By solving for the various incentive amounts necessary to offset the cost of the affordable housing requirement, we can then compare that scale of incentives with levels that municipalities might choose to offer, to determine if such levels can be considered as sufficient. Specifically, we can calculate the estimated density bonus or construction cost reduction needed, among other incentive packages.

It is important to note that **these are merely illustrative examples, intended to provide general guidance on development activities that span a wide diversity of inputs and results**, with variations according to geography, market conditions, and other variables. Initial assumptions have been chosen to represent reasonable inputs, but certainly individual cases will have their own characteristics.

While we have built out the model so as to allow for a variety of assumptions, we will initially walk through a base scenario involving a development of 100 houses for sale. We then loaded in reasonable estimates for various revenue and expenditure assumptions. <21>

It is important to note that we load in initial assumptions of land acquisition and demolition at approximately 20 percent of total project costs, <22> and infrastructure costs at approximately 5 percent of total project costs. <23> These proportions for acquisition, demolition, and infrastructure are important because a density bonus offsets an affordable housing requirement to the extent that such project costs can be held as fixed while more units are added, thus lowering the cost per unit and thus enabling a developer to incur additional costs while retaining a desired profitability level. <24>

We then set house prices **such that the internal rate of return on the initial investment is around 15 percent.** <25> Based on our initial assumptions, this requires a sale price of $ 419,379, a price level at which the internal rate of return is exactly 15 percent and the overall net income for the project is $ 1.6 million (see Figure 3.1).

With the introduction of an affordable housing requirement, a certain number of affordable units will have to be built, depending on the set-aside ratio. Let us preliminarily assume that the set-aside ratio is 20 percent - i.e. affordable units represent 20 percent of all units, or, put another way, there must be one affordable unit for every four market units. Thus, instead of 100 market units selling for $ 419,379, the development now (temporarily) consists of 80 market units selling for $ 419,379 and 20 affordable units selling for much less. Based on COAH's current payment in lieu calculations and assuming a mix of homebuyers that consists of half who are at 40 percent of median income and half who are at 70 percent of median income, we have determined that the affordable price is $ 89,265.

We can now see the impact of the affordable requirement on the developer's bottom line. Not surprisingly, the replacement of 20 market units with 20 affordable units that sell for significantly less than the market units as well as significantly less than the cost to construct them leads to a significant drop in profitability: a negative internal rate of return, and an overall net loss for the project of $ 4.7 million (see Figure 3.2). <26>

Figure 3.1 – Illustrative Pro Forma, Step 1: Prior to Affordable Housing Requirement and Affordable Housing Incentives

	Use Type	Residential Market Sale	Residential Affordable Sale	Upfront Exp Land Acq/Demo	Upfront Exp Infrastructure	Total Development
Sale Price/Unit		$ 419,379				
# Units		100		4,000,000	4,000,000	
SF/unit		2,000		1	1	
Total SF		200,000		4,000,000	4,000,000	
Constr$/SF		$ 150		$ 2.00	$ 0.50	
Sellout Begins in Mo#		13				
Sell-out Pd (Months)		12				
Constr Pd (Months)		24				
Debt / Total		70%				
Debt Interest Rate		7%				
Discount Rate		3%				
Devt Fee (0% if AH)		1%				
Upfront Revenues		$ 41,937,945				$ 41,937,945
Upfront Expenses		$ (30,300,000)		$ (8,000,000)	$ (2,000,000)	$ (40,300,000)

# acres	92
units/acre	1.1
land/cost	20%
infrastructure/cost	5%
net income	$ 1,637,945
10-Year PV	$ (502,504)
IRR	15.00%

COAH Region	AH = X% Med Inc
Blended	55%

COAH Region	1	2	3	4	5	6	Blended
Affordable Sale Price	$87,065	$95,808	$110,921	$93,710	$79,784	$68,304	$89,265

Source: Econsult Corporation (2007)

Figure 3.2 – Illustrative Pro Forma, Step 2: Accounting for Affordable Housing Requirement But Not Yet for Offsetting Incentives

	Use Type	Residential Market Sale	Residential Affordable Sale	Upfront Exp Land Acq/Demo	Upfront Exp Infrastructure	Total Development
Sale Price/Unit		$ 419,379	$ 89,265			
# Units		80	20	4,000,000	4,000,000	
SF/unit		2,000	2,000	1	1	
Total SF		160,000	40,000	4,000,000	4,000,000	
Constr$/SF		$ 150	$ 150	$ 2.00	$ 0.50	
Sellout Begins in Mo#						
Sell-out Pd (Months)						
Constr Pd (Months)						
Debt / Total						
Debt Interest Rate						
Discount Rate						
Devt Fee (0% if AH)		0%	0%			
Upfront Revenues		$ 33,550,356	$ 1,785,307			$ 35,335,663
Upfront Expenses		$ (24,000,000)	$ (6,000,000)	$ (8,000,000)	$ (2,000,000)	$ (40,000,000)

# acres	92
units/acre	1.1
land/cost	20%
infrastructure/cost	5%
net income	$ (4,664,337)
10-Year PV	$ (499,999)
IRR	#DIV/0!

Step 1 to Step 2 -

Zero out devt fee	0%
AH set-aside ratio	20%
Resulting market units	80
Resulting affordable units	20

Source: Econsult Corporation (2007)

Click here for image

3.4 Illustrative Results

Now we can introduce compensatory incentives, and specifically we can determine the scale of incentives that are needed to offset the effect of the introduction of the affordable housing requirement. In other words, we can calculate the amount of incentives that would have to be added in our illustrative example for the internal rate of return to return to 15 percent.

Importantly, we make one key assumption prior to this calculation. Previously, we had not assumed that there would be any difference between the market units and the affordable units. In reality, affordable units almost always differ from market units, if not in the quality of the materials allowed to be used (thus leading to a reduction in the construction cost per square foot) then in the size of the structures (thus leading to a reduction in the square foot per unit). In fact, according to the extensive literature and best practices review conducted by Applegate and Thorne-Thomsen, the most common sizing of affordable units is two units on the same footprint as one market unit (see Figure 3.3).

Figure 3.3 - Illustrative Sizing of Affordable Units vs. Market Units (Fairfax County, Virginia)

(L) Two Affordable Town Homes, (R) One Market-Rate Single-Family Home

Click here for image

Source: Applegate and Thorne-Thomsen (2007)

Based on this scale of sizing, affordable units would be substantially less costly to produce than market units. The cost would not be cut in half, because there are certain fixed costs per unit, such as kitchens and heating/cooling systems, that do not decrease even given much smaller footprints. We estimate that the cost savings per unit is on the order of 40 percent, assuming that footprints are cut exactly in half and that fixed costs represent 20 percent of the cost of constructing a house (see Figure 3.4).

Figure 3.4 - Illustrative Cost Savings on Affordable Units if Built at Two Units Per Lot vs, One Unit Per Lot

	# units /lot	SF /unit	fixed cost per unit	variable cost per SF	total cost for lot	total cost/unit
market	1	2000	$ 60,000	$ 120	$ 300,000	$ 300,000
affordable	2	1000	$ 60,000	$ 120	$ 360,000	$ 180,000
cost savings per unit						40%

Source: Econsult Corporation (2007)

The Applegate and Thorne-Thomsen report affirms the primacy of density bonuses as the incentive type of choice for municipalities, although it also finds that most programs offer more than one incentive type to induce the construction of affordable housing. Accordingly, we solve for the following incentive package:

-- What is the *construction cost reduction* needed to offset the affordable housing requirement, given that affordable units can be half the size of market units and that a "one for one" density bonus is assumed? In this case, we assume that municipalities grant that 20 percent more total units can be built, <27> and then determine the necessary reduction in construction cost per square foot, which can be achieved by relaxing various construction-related regulations such as materials used or parking minimums.

Based on these assumptions and scenarios, we can determine the scale of incentives required to compensate for the affordable housing requirement. **Assuming a "one for one" density bonus, we find that a 4.3 percent construction cost reduction on all units is needed** if all additional units are allowed to be market units (see Figure 3.5).

Figure 3.5 – Illustrative Pro Forma, Step 3: Construction Cost Reduction Needed w/20% Density Bonus, Assuming all Additional Units are Market

Use Type	Residential Market Sale	Residential Affordable Sale	Upfront Exp Land Acq/Demo	Upfront Exp Infrastructure	Total Development
Sale Price/Unit	$ 419,379	$ 89,265			
# Units	100	20	4,000,000	4,000,000	
SF/unit	2,000	1,000	1	1	
Total SF	200,000	20,000	4,000,000	4,000,000	
Constr$/SF	$ 144	$ 165	$ 2.00	$ 0.50	
Sellout Begins in Mo#					
Sell-out Pd (Months)					
Constr Pd (Months)					
Debt / Total					
Debt Interest Rate					
Discount Rate					
Devt Fee (0% if AH)	0%	0%			
Upfront Revenues	$ 41,937,945	$ 1,785,307			$ 43,723,252
Upfront Expenses	$ (28,716,900)	$ (3,298,641)	$ (8,000,000)	$ (2,000,000)	$ (42,015,541)

# acres	92	
units/acre	1.3	
land/cost	19%	
infrastructure/cost	5%	
net income	$	1,707,711
10-Year PV	$	(525,187)
IRR		15.00%

Step 2 to Step 3 -

AH SF Reduction	50%	[AH units can be smaller]
AH Cost Reduction	40%	[Cost reduc < SF reduc]
Density Bonus	20%	[Either set or solve for]
DB Units all Market?	Y	[N = retain set-aside %]

	If all DB units market	*If set-aside ratio retained*
Final market units	100	96
Final affordable units	20	24
Addn constr cost reduc	4.3%	8.1%

Source: Econsult Corporation (2007)

Click here for image

3.5 Lessons Learned

National and Local Context

It is important to remember that the results above are derived from an illustrative pro-forma analysis. Individual municipalities, and individual projects within them, may in fact have very different revenue and expense estimates associated with them. Furthermore, at a statewide level, policy decisions such as the setting of the set-aside ratio and the affordability level will play a role in the incentive levels needed to offset the affordable requirement: the higher the set-aside ratio and/or the deeper the affordability, the more incentives that will be needed.

In placing these incentive levels within a broader, national context, it is important to keep the following considerations in mind:

-- First, our illustrative examples calculate what is necessary to *completely offset the cost of the affordable housing requirement*; certainly, in the marketplace, there are situations in which an incentive does not need to completely offset the cost of the affordable housing requirement for it to be effective in inducing developers to build. Developers may, for example, choose to accept lower margins, and/or find ways to reduce construction costs on their own or through their sub-contractors such that the cost of the affordable requirement is absorbed without adversely affecting profitability. The marketplace may also provide a boost, as noted before, in that the existence of an affordable housing requirement may cause land prices to fall, helping the numbers work for developers.

-- Second, these illustrative examples utilize two very aggressive assumptions related to the provision of affordable housing. For one, providing one affordable unit for every four market units that are built is a very high proportion of affordable units. Furthermore, making affordable units such that someone at 55 percent of median income can afford them is a very deep level of affordability. These are policy choices that can be made, but it must be stated that *requiring more affordable units and/or requiring that those units are more deeply affordable necessarily means higher levels of incentives are needed to offset the associated costs.*

-- Third, in fact many government entities that have instituted affordable housing requirements are located in *extremely attractive real estate markets*, and thus developers are often so motivated to build there that they are willing to bear the additional cost of the affordable housing requirement with zero incentives, density-related or otherwise. In such cases, not only do incentives not need to fully offset the additional cost of the affordable housing requirement, they do not need to be offered at all.

-- Fourth, many affordable housing requirement programs encourage the *mixing of incentive types*. Thus, while density bonuses alone might require fairly high density increases, density bonuses in conjunction with construction cost reductions require more reasonable density increases.

Of course, *municipalities need not limit themselves to the minimum affordable housing requirements*. For example, a municipality could offer a certain level of density bonus or construction cost reduction to offset the cost of the affordable housing requirement, and in parallel offer a deeper level of density bonus or construction cost reduction in exchange for more affordable units than are required, or alternatively for the required number of units sold at a more affordable price, either of which might earn them additional credit towards their affordable housing requirement. A municipality might be motivated to go beyond minimum affordable housing requirements if COAH gives additional credit for doing so, and thus understanding the scale of incentives required to offset requirements at different set-aside ratios and affordability levels provides some guidance to such trade-offs.

Variation Across Municipalities

Importantly, the results above assume that land costs represent 20 percent of total project costs. The higher land costs are as a percentage of total project costs, the lower the density bonus that is required, since the mechanism by which additional market units offset the cost of building affordable units is by allowing the developer to spread the project's fixed costs (i.e. land costs) over more units. Thus, higher fixed costs as a percentage of total project costs mean that

there is a lot to be gained back by the developer in spreading out those higher fixed costs over additional market units. Conversely, if fixed costs are a relatively small percentage of total project costs, the developer does not gain much back by adding additional market units.

In fact, while land costs tend to adjust in response to the attractiveness of the land (in terms of what prices the market is willing to pay for such a location), construction costs are far more homogenous across real estate markets. Consider, for example, our base case as compared to developments in two other municipalities, one that is very low-income and one that is very high-income. <28> On average, land costs tend to represent about 20 percent of total project costs. However, in a municipality that is very low-income, land costs will be far lower, while total project costs will not move as drastically, to the extent that construction costs are relatively equal. The opposite is true in a municipality that is very high-income: land costs will be far higher, while total project costs will not move as drastically. In the first case, land costs might be substantially less than 20 percent of total project costs, while in the second case, land costs might be substantially more than 20 percent of total project costs.

Higher density bonuses are needed in lower-income areas, while lower density bonuses are needed in higher-income areas. This reconciles with national findings: in many cases, higher-income areas can institute affordable requirements with little or no offset density bonus, while lower-income areas often struggle to enable the construction of market units, and thus imposing an affordable requirement would require high levels of offsetting incentives to induce development.

Presumptive Densities

Returning to the notion of presumptive densities, it is clear that the effectiveness of an incentive in offsetting the cost of the affordable housing requirement depends more on the change in density levels rather than on the density level itself. Said another way, the pro forma model, as currently constructed, does not focus on the inherent profitability of a project but rather on how an affordable housing requirement and then offsetting compensatory benefits affect that profitability. Thus, the question of whether a certain density can be deemed sufficient for inducing construction can only be determined if the starting density is known, and so the pro forma model can only touch on the notion of presumptive densities, not answer it directly.

New Construction Versus Rehabilitation

The question of new construction versus rehabilitation, from the lens of the pro forma model, is a question of acquisition and construction costs. To the extent that all other variables are held equal, but a rehabilitation project is swapped in for a new construction project, the difference in profitability will be a function of the amount that the acquisition and construction costs differ.

This, too, is a comparison that can only be made on a case-by-case basis, and cannot easily be generalized, since acquisition and construction costs for rehabilitation projects vary widely depending on the existing value of the property and the depth of renovation that is needed. One additional and interesting wrinkle to this discussion is the vast number of existing incentive programs within the state that are in place to induce developers to choose existing sites and buildings for development rather than building anew in "greenfields." The existence of these incentives can, in many cases, not only narrow the usual difference in cost between new construction and rehabilitation but also, in some cases, make rehabilitation less costly, even factoring in the not uncommon presence of site remediation.

4.0 RECOMMENDATIONS FOR REGULATORY LANGUAGE

This report has been concerned primarily with providing guidance to the New Jersey Council on Affordable Housing (COAH) in determining **what constitutes a "sufficient" set of incentives offered by a municipality to achieve its fair share of affordable housing requirements**, as per the ruling of the Appellate Division of the Superior Court of New Jersey. To address this main topic, we have provided an inventory of incentive mechanisms (Section 2) and

walked through an illustrative pro forma statement to understand the relative impact of various incentives under various scenarios (Section 3).

4.1 Sufficiency of Incentives

Having covered this terrain, we can now offer direct guidance on the notion of "sufficiency," and on related sub-topics that were first surfaced in Section 1. The advantage of a "presumptive density" lies in its simplicity, predictability, and record of success in producing affordable housing. Raw density levels are easy to determine, while changes in density levels require a more complicated calculation involving the weighting of various density levels in different parts of the municipality, in order to determine existing density levels.

Nevertheless, as has been covered previously, real estate markets are such that there may not be a density level that is necessarily sufficient to offset the cost of the affordable housing requirement. The presumptive density level, in other words, depends on a number of variables, most notably the existing density of the municipality, since it is the change in density and not the density level itself that is important.

As discussed previously, in practice many incentive programs around the nation have tended to combine density bonuses with other incentives, such as relaxation of various regulations that tend to lower construction costs. Most commonly, affordable units are allowed to be different in size and/or quality than market units, drastically lowering the cost of constructing them and thus reducing the amount of incentives needed to offset the loss to the developer in providing them. Therefore, in our analysis we make an important assumption that affordable units are half the size of market units, resulting in a construction cost reduction of approximately 40 percent per affordable unit.

Given that assumption, we find that the amount of incentives required to offset the affordable housing requirement depends on **a number of statewide policy decisions,** most notably the set-aside ratio, the affordability level, and the definition of a density bonus as allowing all additional units to be market versus as requiring that additional units retain the set-aside ratio. Again, these are policy choices that affect the scale of the cost of building affordable units and also of the effectiveness of different levels of offsetting incentives.

Importantly, the amount of incentives required to offset the affordable housing requirement also depends on **the proportion that land and other fixed costs contribute** to a typical project's total costs, to the extent that density bonuses work to offset the cost of building affordable units by spreading a project's fixed costs over more units. In particular, in extremely high-income municipalities, land costs can become a very high proportion of total project costs, thus necessitating relatively smaller density bonuses to offset; while in extremely low-income municipalities, land costs can become a very low proportion of total project costs, thus necessitating relatively higher density bonuses to offset.

Finally, it is important to note that this analysis has concerned itself with the sufficiency of incentives. National and local experience suggests that **incentives do not need to be sufficient to be effective**. In other words, this analysis calculates the level at which an incentive completely offsets the affordable housing requirement; but a developer might be sufficiently motivated to build at incentive levels that are far lower, or in some cases with no offsetting incentive offered at all.

In short, this analysis is intended to offer guidance in framing regulatory language and in setting policy, by offering illustrative calculations that provide a framework for making such decisions. In its most recent ruling, the Court made it clear that municipalities must provide a "realistic opportunity" for affordable units to be developed, and it connected that responsibility with the concept of "sufficient" incentives. Thus, the above illustrative pro-forma statements offer some guidance for COAH to evaluate plans put forth by municipalities to that end.

4.2 Municipality Types

There can be a difficulty in setting a statewide rule in a state as diverse in its housing markets as New Jersey. Certainly, there is a wide variation in starting densities across the state, as well as in the relative attractiveness of the housing market, in terms of the usefulness of a certain scale of density bonus.

A simple yet useful way to get at this variation is to **compare a municipality's median house prices with equivalent construction costs.** In other words, determining how much more or less a house sells for in relation to how much it costs to build is an important indicator of the attractiveness of a municipality's housing market, relative to other municipalities. <29>

Efficient real estate markets mean that where house prices are high, land will be relatively expensive, and where house prices are low, land will be relatively cheap. To the extent that there is wide variation between municipalities in terms of the ratio between median prices and construction costs, this has implications for what constitutes a sufficient density bonus.

Since construction costs do not vary nearly as much across the state as median house prices, higher-income municipalities will have price/cost ratios far greater than 1.0, while lower-income municipalities will have price/cost ratios less than 1.0. This simply constructed index thus offers some guidance in terms of classifying municipalities, so that a particular municipality's incentive plan can be evaluated based on whether it is a higher-income municipality (and thus does not need to offer as high of a density bonus) or a lower-income municipality (and thus needs to offer a higher density bonus).

4.3 Non-Residential Construction

Heretofore, we have discussed the application of incentives related to residential construction. However, non-residential construction also generates an affordable housing obligation, which poses a challenge to the extent that housing units cannot always be included at the same site, and non-residential developers may not have the expertise or desire to build residential units. Non-residential developers have heretofore then paid a development fee instead of directly bearing the cost of building affordable units. Would municipalities need to offer incentives to such developers? Density bonuses, the usual mechanism, could apply here in the form of increased floor area ratios (FAR), and **regulatory changes could reduce costs or increase value of construction and thereby encourage development, as could financial subsidies.**

However, such an analysis would have to be preceded by the resolution of a fundamental policy question concerning the need to offer incentives at all. The absence of incentives, after all, would simply mean a higher cost of locating a non-residential use within the state. This could possibly mean the loss of business, on the margins, as developers choose to site their non-residential developments outside state lines or not build them altogether. The alternative of offering incentives is equivalent to spreading the cost across all taxpayers. Thus, it is a matter of policy preference first, whether the state seeks to offer incentives for non-residential construction or not.

To use some specific numbers, there is currently a 2 percent development fee levied on non-residential construction that does not build its own affordable housing. Given that construction costs and employment densities vary by building type, the actual cost of building an affordable unit ranges from 2.8 percent to 10.1 percent of the assessed value of non-residential construction (see Figure 4.1). <30>

Figure 4.1 – Cost of Affordable Housing as a Function of Non-Residential Construction

Building Type	Office	Retail	Factory	Storage	Manuf	Theater	Restaurant	Library	Arena	Stadium	K-12	Hospital	Hotel
Sample # SF in Project	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000
Average $ Constr Cost/SF	$ 112.5	$ 157.6	$ 94.8	$ 84.8	$ 159.4	$ 151.7	$ 127.3	$ 134.6	$ 131.3	$ 154.3	$ 152.2	$ 306.5	$ 233.7
Total Sample Project Cost	$ 11,252,510	$ 15,761,960	$ 9,477,960	$ 8,479,500	$ 15,944,850	$ 15,170,530	$ 12,727,920	$ 13,459,900	$ 13,131,620	$ 15,434,000	$ 15,218,920	$ 30,648,190	$ 23,367,170
Approx. Project Cost / Market Value	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%
Assessed Value / Market Value	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Sample Project Assessed Value	$ 22,505,020	$ 31,523,920	$ 18,955,920	$ 16,959,000	$ 31,889,700	$ 30,341,060	$ 25,455,840	$ 26,919,800	$ 26,263,240	$ 30,868,000	$ 30,437,840	$ 61,296,380	$ 46,734,340
Task 4 Jobs/1000 Gross SF	2.6	1.8	1.1	1.3	1.4	1.5	2.9	1.5	3.1	2.3	1.8	2.3	1.8
Jobs Created by Project	259.4	156.4	111.7	134.7	143.4	146.4	293.3	147.3	312.8	234.6	156.4	234.6	156.4
Jobs Per Affordable Unit	16	16	16	16	16	16	16	16	16	16	16	16	16
# Affordable Units to be Built	16.2	9.8	7.0	8.4	9.0	9.2	18.3	9.2	19.6	14.7	9.8	14.7	9.8
$ Cost Per Affordable Unit	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735	$ 135,735
$ Cost for All Affordable Units	$ 2,200,397	$ 1,326,806	$ 947,719	$ 1,142,528	$ 1,216,239	$ 1,242,106	$ 2,487,762	$ 1,249,636	$ 2,653,613	$ 1,990,210	$ 1,326,806	$ 1,990,210	$ 1,326,806
$ Cost as a % of Assessed Value	9.8%	4.2%	5.0%	6.7%	3.8%	4.1%	9.8%	4.6%	10.1%	6.4%	4.4%	3.2%	2.8%

Source: Econsult Corporation

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4.4 Payments in Lieu

Before the Court issued its opinion, COAH proposed revised regulations for payments in lieu, with the intention of addressing the main objection raised about the existing regulations. <31> The objective of these new proposed regulations is to estimate the amount of subsidy needed in each COAH Region to produce an affordable housing unit to establish a basis for the required payments. We think these proposed regulations reasonably estimate the cost of providing affordable housing. However, the proposed formula assumes that construction costs do not vary across regions, although it does incorporate varying land costs and household income levels (see Figure 4.2).

Figure 4.2 - Current COAH "Payment in Lieu of" Amounts

COAH Region	1st Quartile	Land Costs	Constr Costs	Soft Costs	Total Costs	AH Price	Req Subsidy
1	$ 330,00	$ 82,500	$ 155,433	$ 19,035	$ 256,968	$ 87,065	$ 169,903
2	$ 255,000	$ 63,750	$ 155,433	$ 17,535	$ 236,718	$ 95,808	$ 140,910

3	$ 381,966	$ 95,492	$ 155,433	$ 20,074	$ 270,998	$ 110,921	$ 160,077
4	$ 343,725	$ 85,931	$ 155,433	$ 19,309	$ 260,673	$ 93,710	$ 166,963
5	$ 257,790	$ 64,448	$ 155,433	$ 17,590	$ 237,471	$ 79,784	$ 157,687
6	$ 264,690	$ 66,173	$ 155,433	$ 17,728	$ 239,334	$ 68,304	$ 171,030
Blended	**$ 305,529**	**$ 76,382**	**$ 155,433**	**$ 18,545**	**$ 250,360**	**$ 89,265**	**$ 161,095**

Source: New Jersey Council on Affordable Housing (2007)

COAH's current "Payment in Lieu of" calculations assume uniform construction costs across COAH Regions. Construction costs are certainly more uniform across the state than house prices, due to the common drivers that affect such costs regardless of location. Nevertheless, such costs are not totally uniform, to the extent that there are minor differences in the cost of labor and materials in different parts of the state.

Using publicly available data from RS Means, we can determine these variations across municipalities, and then aggregate them to a COAH Region level. <32> Specifically, we take COAH's original $ 155,433 construction cost across all COAH Regions and adjust upward or downward, depending on the relationship of the weighted average of all municipalities within a given COAH Region to the statewide average. Adding back other costs and then subtracting the affordable housing price gets us **the new required subsidy per unit by COAH Region,** which as the table below demonstrates, is anywhere from 9 percent lower to 7 percent higher than the original figures (see Figure 4.3). We recommend that COAH adopt these figures in its proposed regulatory language to account for these construction costs differentials across geography.

Figure 4.3 - Adjusted Affordable Housing Subsidy Amounts

COAH Region	1st Quartile	Land Costs	% of NJ Avg	Constr Costs	Soft Costs	Total Costs
1	$ 330,000	$ 82,500	107%	$ 165,798	$ 19,035	$ 267,332
2	$ 255,000	$ 63,750	105%	$ 163,206	$ 17,535	$ 244,491
3	$ 381,966	$ 95,492	91%	$ 141,258	$ 20,074	$ 256,824
4	$ 343,725	$ 85,931	91%	$ 140,697	$ 19,309	$ 245,937

5	$ 257,790	$ 64,448	98%	$ 152,835	$ 17,590	$ 234,873
6	$ 264,690	$ 66,173	108%	$ 167,262	$ 17,728	$ 251,163
Blended	**$ 305,529**	**$ 76,382**	**100%**	**$ 155,433**	**$ 18,545**	**$ 250,360**

Source: Econsult Corporation (2007)

COAH Region	AH Price	Req Subsidy	% of Previous
1	$ 87,065	$ 180,267	106%
2	$ 95,808	$ 148,683	106%
3	$ 110,921	$ 145,903	91%
4	$ 93,710	$ 152,227	91%
5	$ 79,784	$ 155,089	98%
6	$ 68,304	$ 182,859	107%
Blended	**$ 89,265**	**$ 161,095**	**100%**

Source: Econsult Corporation (2007)

APPENDIX A - PRICE/COST INDEX METHODOLOGY AND RESULTS

The supply of housing in a municipality, whether affordable or market rate, is a function of the risk-adjusted returns relative to other possible investments. In this Appendix, we seek to **categorize municipalities according to their relative attractiveness to developers,** based on the relationship between house prices and construction costs. In this way, we can attempt to quantify the variations across COAH Regions related to affordable housing provision.

Perhaps the most significant indicator of the strength of a municipality's residential real estate market is **the relationship between market prices and construction costs.** In the simplest terms, if housing prices exceed construction costs, then new housing units might be produced, while if prices are less than costs, definitely no new supply will be built. <33>

If we can estimate construction costs by municipality, we can compare each to the local housing prices. Therefore, we look at costs and prices per SF of constant quality units.

1) Look at market prices for all houses instead of new ones

2) Normalize house prices by median number of bedrooms based on census info

3) Use the free apartment construction index from RS Means for an x bedroom apartment <34>

On the price side, we divide out by number of rooms, which is available via US Census data; and on the cost side, we look up the construction cost for apartments. This is a relatively approximate method, in that it does not compare like

products across municipalities, since age and size of housing stock varies from municipality to municipality. Nevertheless, this approach does get at degrees of unattractiveness reasonably well, by giving an indication of how far from construction costs the average market price is. These results can be determined at a municipal, county, or COAH Region level (see Figure A.1).

Figure A.1 - Price/Cost Index Results, by COAH Region

COAH Region	County Price/Cost Ratio-Low Const. Cost	Price/Cost Ratio-Medium Const. Cost
1	2.53	2.26
2	2.50	2.25
3	1.91	1.72
4	1.91	1.72
5	0.90	0.81
6	1.61	1.45

Source: Econsult Corporation (2007)

There are other, more complex ways to approach this comparison, but at this stage we are merely interested in an easily computable index that uses free and public data. In fact, this simple index has the nice benefit of being easy to understand, in that any number below 1.00 signifies that market prices are below construction costs, and any number above 1.00 signifies that market prices are above construction costs. <35>

APPENDIX B - PROPOSED PAYMENT IN LIEU OF PROVISION REGULATIONS (COAH)

The proposed rule at N.J.A.C. 5:94-4.4 deletes the option for payments in lieu to be negotiated between the municipality and the developer and instead establishes a standard guideline for establishing the amount of payments in lieu of constructing affordable units on site to better assist municipalities and ensure that the amount is determined consistently throughout the State. The payment in lieu amount is to be based upon one of three methods, or a combination thereof. A more detailed description of the calculations follows.

For a payment in lieu amount based on new construction, residential land value was established by analyzing over 17,000 Home Owner Warranty policies issued during the first nine months of 2006. Land values were based on 25 percent of the first quartile of all new homes throughout the state grouped by COAH Region.

To establish development costs, the Council assumed that a development with affordable units would commonly take place in a multi-family dwelling without an elevator. Additional assumptions regarding development hard costs, related soft costs, and the developer's fee were drawn from the cost criteria included in a current rulemaking proposal by the New Jersey Department of Community Affairs, which proposes revisions to its rules at N.J.A.C. 5.43-1 et seq. regarding the Neighborhood Preservation Balanced Housing Program. To arrive at unit costs, a typical unit was calculated to include 920 square feet based on the bedroom distribution criteria outlined in the HMFA's rule at N.J.A.C. 5:80-26.3, commonly referred to as the Uniform Housing Affordability Controls.

Finally, development costs have been offset by the estimated proceeds from the sale of the affordable unit or the capitalization of rental income, resulting in the required subsidy amount. The subsidy amount would then be divided by eight to determine a per market-rate residential payment in lieu or by 25 to determine a per job non-residential payment in lieu. For example, in Region 1 the subsidy amount was calculated to be $ 169,913, resulting in a per market-rate residential payment in lieu of $ 21,239 and a per job non-residential payment in lieu of $ 6,797.

The Council will review the formula periodically, propose adjustments to the payment schedule and publish the results annually to reflect changing conditions in the real estate market and construction costs or to reflect updated cost containment parameters associated with the Neighborhood Preservation Balanced Housing Program.

The second proposed calculation method is based on municipalities utilizing the "Buy Down" program described in N.J.A.C. 5:94-4.10. Municipalities shall base payments in lieu of constructing affordable units on the differential between market value housing and affordable housing based on market rate housing that represents the first quartile of existing home sales for the region and the affordable prices, and including a consideration for rehabilitation necessary to comply with code requirements.

Alternatively, municipalities may propose a more detailed method of determining payments in lieu provided the method is approved by the Council and the method provides a clear and demonstrable relationship between the net cost of providing affordable housing and the fee being established. In so doing, municipalities may blend costs associated with varying affordable housing delivery mechanisms to establish one standardized fee.

5:94-4.4 Municipal zoning options

(a)-(b) (No change.)

(c) The amount of payments in lieu of constructing affordable units on site shall be [negotiated between the municipality and the developer] **established by ordinance and shall be based on an analysis of the net cost of subsidizing affordable housing within the municipality, which utilizes one or more of the techniques in 1. - 3. below and which may be combined to establish a blended rate based on the municipality's proposed use of funds. Anticipated proceeds from the sale or rental of these units shall be calculated to conform to the income stratification and bedroom distribution criteria outlined in N.J.A.C. 5:80-26.1 et seq. Payment in lieu amounts shall be re-established periodically but not less frequently than at the third, fifth and eighth year plan reviews established pursuant to N.J.A.C. 5:95-9.**

1. Amounts established for payments in lieu of constructing affordable units that are based on constructing new residential units pursuant to N.J.A.C. 5:94-4.6 shall be based on the sum of development hard costs, related soft costs and developer's fees pursuant to the cost containment provisions of N.J.A.C. 5:43-1 et seq. and land costs equal to 25 percent of the first quartile of new construction costs as reported to the Homeowner Warranty Program and totaled by Region. Average construction costs and offsetting proceeds anticipated from the sale of the unit or the capitalization of rental income shall be published annually by the Council. The initial determination of these costs is as follows, which is valid until [one year from the effective date of these rules]:

COAH Region	1st Quartile	Land Costs	Construction Costs	Total Cost	Affordable Price	Subsidy Required
1	$ 330,000	$ 82,500	$ 155,443	$ 256,978	$ 87,065	$ 169,913
2	$ 255,000	$ 63,750	$ 155,443	$ 236,728	$ 95,808	$ 140,920
3	$ 381,966	$ 95,492	$ 155,443	$ 271,009	$ 110,921	$ 160,088
4	$ 343,725	$ 85,931	$ 155,443	$ 260,284	$ 93,710	$ 166,974
5	$ 257,790	$ 64,448	$ 155,443	$ 237,482	$ 79,784	$ 157,698
6	$ 264,690	$ 66,173	$ 155,443	$ 239,345	$ 68,304	$ 171,041

2. Amounts established for payments in lieu of constructing affordable units that are based on buying down or subsidizing rents pursuant to N.J.A.C. 5:94-4.10 or N.J.A.C. 5:94-4.11 shall be based on an analysis of the first quartile of market value or market-rate rent of housing currently available for sale or rent within the municipality with the payment in lieu amount representing the subsidy required to make the units affordable after deducting anticipated proceeds from the sale or rental of these units and giving consideration to any rehabilitation expenses necessary to comply with N.J.A.C. 5:94-4.10(a)3.

3. Municipal ordinances establishing payments in lieu of constructing affordable housing may utilize alternative valuation methods subject to approval from the Council. All amounts established for payments in lieu of constructing affordable units shall be directly related to net costs associated with the proposed mechanisms for delivering affordable housing as detailed in a Spending Plan that has been approved by COAH pursuant to N.J.A.C. 5:94-6.5.

<1> An extensive literature and best practices review was conducted by Applegate and Thorne-Thomsen to inventory these various mechanisms, and to highlight their use and effectiveness around the country.

<2> The Appellate Division of the Superior Court of New Jersey in the matter of the adoption of N.J.A.C. 5:94 and 5:95 by COAH (January 25, 2007), p. 103.

<3> The extent of filtering and its capacity to address low-moderate income needs was also questioned by the Court, and is the subject of Task 2 of this overall effort.

<4> Montgomery County, Maryland website.

<5> City of Boston website.

<6> Note that with reduced value associated with building housing, more land will be used for other purposes, and less land will be used for housing, all else equal.

<7> To the extent that land prices drop below this level, then some of the landowners' losses are due to reduced housing production. This is because the amount of economically developable land will be reduced as its return for that use is reduced.

<8> This discussion deals with a market in which a restriction (i.e. the affordable housing requirement) is imposed, and incentives are then offered. The first action, imposing the affordable housing requirement, lowers demand for development, and hence both prices and land consumed for residential development will tend to fall. The second action, making offsetting incentives available, reverses this effect, mitigating some or all of the effects of lower demand. This is true whether one tends to believe the original price or the post-requirement price is the more "efficient" price.

<9> Capitalization occurs in an asset whenever there is a change in a characteristic or attribute related to the asset. These can be positive or negative changes; if the former, the asset becomes more attractive, increasing demand for the asset, which in turn increases its market price. A similar story, with effects in the opposite direction, occurs if a negative change or characteristic is introduced.

<10> See *Building Industry Association: Philadelphia Tax Abatement Analysis*, Econsult Corporation (September 2006), in which it was proven that the ten-year property tax abatement in Philadelphia has induced a significant proportion of the new construction that took place subsequent to the existence of the abatement.

<11> This may be even more likely in states like New Jersey, where demand for open space is fairly strong, and the "border" between residential use and non-development is very responsive to prices.

<12> COAH's Second Round Rules, for example, set six units per acre as a presumptive density, which meant that municipalities that offered that incentive were presumed to have created a realistic opportunity for the construction of affordable housing within the municipality.

<13> This assumes, as discussed previously, that the supply of developable land is not totally fixed. In other words, if there is no ability to add or subtract to the amount of developable land, then it is alternatively possible that the introduction of an affordable housing requirement will lead to a reduction in land prices, such that from the developer's standpoint, there is no difference in profitability (i.e. the added cost of having to build affordable units is completely offset by the lower land acquisition cost).

<14> Note that while large lot size zoning may reduce the value of land per acre, it also may result in higher priced housing, as wealthier owners put larger, more luxurious housing on the land.

<15> Metro website.

<16> Note that as discussed previously, by making the land more desirable for development, the price of land will rise, offsetting some of the positive incentive for development.

<17> Note that by structuring fiscal incentives such that they are only available with the construction affordable housing, it is more likely that the incentive will result in additional housing production rather than simply increases in land prices.

<18> Bay Area Homeless Alliance website.

<19> City of Madison website.

<20> Portland Development Commission website.

<21> Key initial assumptions include the following:

-- Houses will be 2000 square feet in size.

-- Construction costs will be $ 150 per square foot, inclusive of both hard and soft costs.

-- The construction will take 24 months, with the first houses completed and ready for sale halfway through the construction period.

-- The houses will sell out over a 12-month period, and thus all houses will have been sold by the completion of the construction period.

-- Seventy percent of the project cost will be raised via debt at a 7 percent interest rate, and the other 30 percent is in the form of equity.

-- The interest on the debt will be capitalized during the construction period.

-- Loan proceeds are drawn down as needed and paid back as houses are sold.

-- Inflation will be three percent.

-- A development fee of 1 percent will be assessed, but is waived if affordable units are built.

<22> Controlling for the income level of residents and the market price of for-sale units, land cost as a proportion of total project costs is a ratio that tends to hold relatively constant across high-density and low-density locations. The higher the density of a site, the more profitable the development potential for that site, and therefore the higher the land price; but this is offset by the fact that higher-density sites require less land per unit. The same holds true for lower-density sites: land prices are lower, but more land needs to be purchased per unit.

Importantly, land cost as a proportion of total project costs is not relatively constant as one considers higher-income and higher-priced sites, or conversely lower-income and lower-priced sites. As we discuss later in this section, it is possible for land costs to deviate significantly as a proportion of total project costs, and when they do, such sites require fundamentally different density bonus levels to offset the cost of building affordable units.

<23> Infrastructure costs are relatively constant as a proportion of total project costs, although it is likely that they are more prone than land costs to move up or down as a proportion of total project costs when comparing high-density versus low-density sites. It is also hard to generalize if infrastructure costs are truly unchanged as units are added, as it is possible that costs could increase if additional systems need to be installed on a per-unit basis, or alternatively that costs could actually decrease if higher densities necessitate less linear feet of roads and thus less road material. Nevertheless, to the extent that this is simply an illustrative pro-forma, we will simply assume that this proportion is fixed for the purposes of this exercise.

<24> To size this project to a typical New Jersey development, we assume the development site is 4 million square feet, or about 92 acres; thus, the initial density for the development is about 1.1 units per acre. Additional assumptions for costs associated with acquisition, demolition, and infrastructure yield acquisition and demolition costs of about $ 8 million and infrastructure costs of about $ 2 million out of a $ 40 million project cost.

<25> I.e. the developer would be indifferent in choosing between the estimated cash flows from this proposed development and those from an alternate investment of equal risk that earned approximately 15 percent annually, as determined by factoring in upfront revenues and expenses, as well as 30 years of ongoing revenues and expenses, properly discounted. In other words, we set house prices and/or rental rates such that the internal rate of return will be approximately 15 percent. This return is inclusive of developer fees, and thus represents a reasonable level of profitability. Note that if this level is set at 20 or even 25 percent, the ensuing results do not materially change.

<26> Bear in mind that, in addition to the introduction of the affordable housing requirement, a second difference in the second sheet is the removal of development fees.

<27> A 20 percent density bonus is modeled here because a 20 percent set-aside ratio is assumed, and thus this level of incentive represents a "one for one" density bonus: one additional unit for every initially required affordable unit. For the purposes of this illustrative scenario, we assume that all additional units are market units; thus, a 20 percent density bonus defined in this way would mean that the project would go from 100 market units (Step 1) to 80 market units and 20 affordable units (Step 2) to 100 market units and 20 affordable units (Step 3).

<28> Alternatively, one could compare a municipality with itself: the municipality at one point in time, versus a different point in time after it had experienced material changes in density and/or income levels.

<29> See Appendix A for a description of a price/cost index methodology and for results of these calculations at the COAH Region level.

<30> These estimates make the following assumptions:

-- Construction costs are based on estimates obtained from RS Means' free online cost estimator.

-- Project costs are assumed to be 50 percent of market value, while assessed value is equal to market value in New Jersey.

-- Employment density uses figures determined by building type for employees per 1000 gross square feet from other recent work performed for COAH by Econsult Corporation.

-- We assume a revised ratio of one affordable unit required for every 16 jobs created.

-- Our subsidy per affordable unit is calculated as follows: 2000 square feet per unit, times $ 150 construction cost per square foot, minus 40% cost savings by halving the size of the affordable units, plus+ land costs at 20 percent of total project costs, minus $ 89,265 (affordable price for 55 percent of median income).

<31> See Appendix B for the text of the proposed Payment in Lieu regulations.

<32> We use the same data as described and depicted in Appendix A.

<33> If we consider land value as a residual, then housing prices would have to exceed construction costs by at least the value of the next best use (opportunity cost) of the land. Note that one "use" of the land is to hold it speculatively in anticipation of higher future prices.

<34> RS Means gives a low, medium, and high estimates; we have chosen to display separate results for low and medium.

<35> We note that communities with low priced homes and no new homes will fall at the bottom, and communities with higher priced old homes and significant numbers of new homes will fall near the top. We are only interested in the ordering. We group communities as high, median and low prices relative to construction costs. This provides an indication of which communities are unlikely to see development--especially with added burdens.

We also note that problems arise when one tries to compare construction costs (new houses) with sales prices (varying degrees of house age, with some municipalities having generally older stock than others). Also, we are not able to compare on a per SF basis, because that data is not always available. On the cost side, RS Means' online calculator is not free for residential construction aside from apartments.

Finally, there is a danger in putting too much weight into these specific numbers, to the extent that they represent data from one point in time, a time that happens to be experiencing greater than normal volatility on both the price and cost side: prices have soared and are now declining, while construction costs have increased faster than historical growth rates.

Despite these shortcomings, this simple index achieves what we are seeking, namely a reasonable approximation of the relative degree of attractiveness to build, from municipality to municipality.

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING
TASK 4 - COUNTING JOBS AT THE LOCAL LEVEL

Final Report Submitted To:

New Jersey Council on Affordable Housing

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

Growth share is the share of the affordable housing need generated by a municipality's actual growth from 2004 to 2018. There are residential and non-residential components to this calculation. The way in which affordable housing need is generated by non-residential growth is the subject of Task 4 - Counting Jobs at the Local Level. That method is as follows:

The non-residential component of growth share requires that one unit of affordable housing be provided for every 25 jobs that are created as measured by square feet of new or expanded non-residential construction according to use group. <1>

Appendix E of the New Jersey Council on Affordable Housing's (COAH) Third Round Rules provides these ratios by building type. While the ratio of jobs created to affordable housing units required may change, the principle of the calculation remains the same. This principle was challenged by the New Jersey Supreme Court in a number of ways, and thus Task 4 concerns itself with the following considerations:

1. Counting jobs via square footage rather than directly through employment data or estimates.

COAH was challenged by groups that wondered why employment data or estimates would not be a direct and accurate measure of jobs created. However, estimates of employment at the municipal level are not available in a timely manner. Only County Business Patterns data are available, but this data set has severe limitations, in that it is available only at the zip code level, which can cut across municipalities, and it also covers only private sector employment. Moreover, the data are available only with a significant lag time. As we approach 2008, the latest County Business Patterns data are for 2005. Knowing where new work space is being built and how much, on the other hand, is a stable and timely indicator of growth in a municipality. Moreover, municipalities currently track these construction data.

2. Not counting jobs created by the rehabilitation of existing unused or underused non-residential space.

The decision to exclude from affordable housing need calculations any existing space that was redeveloped was one that was challenged by the Court. However, redevelopment involving the improvement of formerly under-occupied or un-occupied buildings into occupied ones does not actually generate net new jobs over time, to the extent that the affordable housing obligation impact of the full square footage of such buildings, and not their present high-vacancy condition, was assigned to municipalities, per the current Appendix E ratios.

3. Seeking employment ratios specific to New Jersey.

A final critique of the existing Appendix E ratios was that they were largely based on national data, when New Jersey proportions might differ. In response, Econsult performed a national literature review, and conducted a large telephone survey of 1000+ New Jersey businesses, to provide COAH with a more comprehensive and relevant base of knowledge in determining Appendix E ratios.

The literature review and the survey results serve as the basis for the following recommendations for updated Appendix E ratios (see Figure E.1). Importantly, because we are considering employment density from a building-wide and municipality-wide perspective, we must account for the fact that a not insignificant portion of most buildings, particularly in multi-tenant facilities, is common space. Since the intended use of these ratios is to estimate the number of jobs associated with a municipality's intended growth in non-residential space, a calculation of jobs should take as its base on non-residential space the space that is actually occupied by workers. To be sure, common space ratios vary widely over time, building type, and geography; we assume that 15 percent of building space is unused from an employment standpoint.

We also recognize that even within the universe of occupied space, at any given time buildings will experience some vacancies as a result of natural economic and real estate cycles at the local, regional, and national levels. This, of course, will tend to overestimate the number of jobs assigned to a building or a municipality. To the extent that employment growth continues to occur, this will lead to a further overstatement in raw number terms over time, or to put it another way, a greater affordable housing requirement.

Like common space ratios, vacancy rates vary widely over time, building type, and geography. For new construction, this proportion is likely to be less than 10 percent. For the purposes of this analysis, we do not make any adjustment based on vacancy, but rather assign jobs to buildings assuming full occupancy. In this way, differing vacancy rates over time, building type, and geography do not affect the amount of affordable housing required, since all calculations are based on 100 percent occupancy.

Figure E.1 - Proposed Building Types and Ratios, Employees Per 1000 Square Feet

UCC Use Grp	Building Category	NJ Survey Median	Lit Review Median	Appendix E	Recommended Ratio, Net of 15% Common Space
B	Office	3.32	3.33	3.00	2.8
M	Retail	2.00	1.72	1.00	1.7
F	Factory	1.43	2.19	2.00	1.2
S	Storage	1.72	1.11	0.20	1.5
H	Manuf	1.83	2.19	1.00	1.6
A1	Theater	1.87	N/A	2.00	1.6
A2	Restaurant	3.75	6.80	3.00	3.2
A3	Library	1.88	N/A	3.00	1.6
A4	Arena	5.00	N/A	3.00	3.4
A5	Stadium	3.45	N/A	Exclude	2.6
E	K-12	2.67	0.92	1.00	1.7
I	Hospital	3.40	2.53	2.00	2.6
R1	Hotel	2.50	0.67	0.80	1.7
U	Other	1.50		Exclude	Exclude

Click here for image

Source: Econsult Corporation (2007)

1.0 CONTEXT

1.1 Current Treatment: COAH's Adopted 2004 Third Round Rules

Under the third round rules adopted in 2004, growth share is the share of the affordable housing need generated by a municipality's actual growth from 2004 to 2018. There are residential and non-residential components to this calculation. The way in which affordable housing need is generated by non-residential growth is the subject of Task 4 - **Counting Jobs at the Local Level**.

In its publication, "The COAH Handbook: Your Guide to Navigating the Third Round Rules," the New Jersey Council on Affordable Housing (COAH) defines the way in which the affordable housing obligation generated by non-residential growth is determined based on the 2004 third round rules:

The non-residential component of growth share requires that one unit of affordable housing be provided for every 25 jobs that are created as measured by square feet of new or expanded non-residential construction according to use group. <2>

Let us consider each component of this statement in turn:

-- *One unit of affordable housing be provided for every 25 jobs that are created.* The accuracy of this ratio is not being addressed in this task. Another team, from the University of Pennsylvania, is tasked with updating the growth share ratios.

-- *As measured by square feet of new or expanded non-residential construction.* Each municipality has a construction official who submits information on new construction and space-adding renovation to the New Jersey Department of Community Affairs' Division of Codes and Standards. COAH uses these data to determine the amount of actual non-residential growth in the municipality.

-- The total amount of new square feet of non-residential space being added in a municipality is therefore the sum of new construction and any renovation that adds space. In other words, **renovations that do not increase the amount of space were not included** in the sum.

-- Importantly, **demolitions currently count as negative square footage**, in that they decrease the amount of non-residential space in a municipality. Thus, demolitions decrease the amount of affordable housing that must be built in a municipality.

-- Combining the two points above, if a building is demolished and an identically-sized building constructed in its place, there is no net new affordable housing obligation created, since the two buildings' square footage cancel each other out.

-- If a non-residential space is converted into residential space, an affordable housing obligation will result from the new residential space. There may be partially or fully offset by a corresponding reduction in the affordable housing obligation that results from the decrease in non-residential space.

-- *According to use group*. **Appendix E of the Third Round Rules** segments the Uniform Commercial Code use groups into 14 categories, and provides ratios of jobs per 1000 square feet such that the number of new jobs can be determined based on the total square footage being added. For example, the ratio for Use Group B, which consists of office buildings, is three jobs per 1000 square feet, and thus a newly constructed 100,000 square foot office building would be assumed to add 300 jobs (100,000 SF x 3 jobs / 1000 SF), creating an affordable housing need of 12 units (300 jobs x 1 affordable housing unit / 25 jobs).

1.2 Court Challenges

In its opinion in regards to the adoption of COAH's Third Round regulations, the New Jersey Appellate Division listed a number of challenges to COAH's approach to calculating affordable housing need generated by non-residential development. These challenges form the basis of our response, and can be summarized as follows:

-- *Using square footage of new non-residential development as a surrogate to predict job growth.* In its notice of appeal, ISP Management Company challenged the method of **determining job growth indirectly, via new non-residential space,** rather than employing a more direct approach and using more reliable information. <3>

COAH's rationale was that employment data at the municipal level is not updated as frequently as construction data, and that job data may not accurately reflect where the jobs are actually located. <4> Therefore, the use of data on square footage of new construction, while not as direct in nature, is **routinely collected, and can be applied uniformly** in determining the affordable housing obligations of each municipality.

-- *Not counting jobs created by the rehabilitation of existing underused non-residential space.* This decision, to **exclude from affordable housing need calculations any existing space that was redeveloped,** was noted in the court opinion as follows:

Appellants contend that the methodology selected by COAH significantly understates actual job growth. They argue that a valid growth share methodology requires that an affordable housing obligation be allocated to a municipality that experiences real growth in jobs. They point out, and COAH does not dispute, that there is an abundance of existing vacant office and retail space in the State, and municipalities that experience actual job growth should also be required to provide their fair share of affordable housing to meet the need generated by that job growth. <5>

-- *Allowing municipalities to subtract demolished space in their calculations of net job growth.* COAH's rationale was that to allow reductions based on job loss not accompanied by decrease in square footage would require using a different data source, inconsistent with its intent to use **uniform data sources in calculating net job growth**.

Of the three challenges, the last one, concerning demolished space, was upheld by the court: "COAH has not acted unreasonably in subtracting demolitions from new certificates of occupancy." <6>

1.3 Scope of Work

Econsult was tasked with weighing in on these three specific challenges. It was also assigned to verify or update the building types and employment estimates in Appendix E of the Third Round Rules. Therefore, this report will proceed as follows:

-- In Section 2, we will summarize the results of our **literature review** on the subject of building types and employment estimates. Most notable in the studies we reviewed is one commissioned in part by COAH's parent entity, the New Jersey Department of Community Affairs, entitled, "New Jersey Demographic Multipliers: The Profile of the Occupants of Residential and Nonresidential Development."

-- In Section 3, we will review our approach to conducting a large-scale **survey of non-residential locations in New Jersey**, and share our data findings. One critique of Appendix E is that it is largely based on national studies and data; this survey seeks to provide the primary research necessary to arrive at employment estimates more in line with New Jersey norms.

-- Section 4 concludes our report with **findings and recommendations**. Here, we combine our lessons learned from the previous two sections in offering an updated Appendix E. We will also comment on the challenges listed above, and offer some guidance on the wording of relevant rules for future rounds.

2.0 NATIONAL LITERATURE REVIEW

The most comprehensive report that was identified during our literature review of building types and employees per square feet was one delivered by the Rutgers University Center for Urban Policy Research and commissioned in part by the New Jersey Department of Community Affairs, parent agency of the New Jersey Council on Affordable Housing (COAH): "New Jersey Demographic Multipliers: The Profile of the Occupants of Residential and Nonresidential Development." <7> The goal of this study was to utilize state data and national studies to estimate the effect of new residential and non-residential development on population growth.

In estimating "nonresidential multipliers" (i.e. number of employees per 1000 square feet of non-residential space, by building type), the study defines such space as "gross floor area." It also divides space into the following categories, and preliminarily suggests the following multipliers (see Figure 2.1):

Figure 2.1 - Nonresidential Multipliers Suggested by "New Jersey Demographic Multipliers" Study

Nonresidential Use	*Employees /1000 SF*
I. Commercial	
A. Office	3.0-4.0
B. Retail	1.0-2.0
C. Eating & Drinking	3.0-4.0
II. Industrial	
A. Warehouse	0.2-0.8
B. Manufacturing & Industry	1.0-2.0
III. Hospitality and Other	
A. Lodging	0.5-1.0
B. Health	2.0-3.0
C. Schools	0.8-1.2

Source: Center for Urban Policy Research, Edward J. Bloustein School of Planning & Public Policy, Rutgers University (2006).

Importantly, the report acknowledges that these suggestions are based on national studies and therefore may have varying levels of applicability to New Jersey. The report specifically notes that, compared to the rest of the US, a disproportionately higher amount of office space is used for research and development, because of the state's significant pharmaceutical industry; and R&D tends to require more space per employee. Combined with the fact that other workplace trends, such as telecommuting and work sharing, are possibly taking place to greater or lesser degrees in New Jersey versus the nation, a nonresidential multiplier survey concentrating solely on New Jersey becomes all the more valuable.

The nonresidential multipliers suggested by the New Jersey Demographic Multipliers report are based on a number of national studies that were produced within the past twenty years, many of which were also included in our literature review. We also reviewed a number of additional studies on the subject, to provide a fuller picture of the issue (see Figure 2.2). <8>

Figure 2.2 - Summary of Non-Residential Multipliers Based on the New Jersey Demographic Multipliers Report and on Literature Review

Employees per 1000 Square Feet: Min/Max/Median, Mean, Standard Deviation, and Range Recommended by New Jersey Demographic Multipliers Report

Non-Res Use	Min	Max	Median	Mean	StdDev	Recom
I. Commercial						
A. Office	2.56	4.34	3.33	3.41	0.52	3.0-4.0
B. Retail	0.57	2.48	1.72	1.79	0.56	1.0-2.0
C. Eating & Drinking	0.38	14.29	6.80	7.07	5.89	3.0-4.0
II. Industrial						
A. Warehouse	0.46	1.92	1.11	1.05	0.47	0.2-0.8
B. Manufacturing & Industry	1.43	4.76	2.19	2.46	0.99	1.0-2.0
III. Hospitality and Other						
A. Lodging	0.43	1.10	0.67	0.71	0.25	0.5-1.0

Non-Res Use	Min	Max	Median	Mean	StdDev	Recom
B. Health	2.00	3.25	2.53	2.58	0.48	2.0-3.0
C. Schools	0.77	1.19	0.92	0.96	0.21	0.8-1.2

Source: various

3.0 NEW JERSEY SURVEY

3.1 Survey Methodology

To augment this review of national studies on the subject of non-residential multipliers with actual primary research specific to New Jersey, we hired the reed group to conduct a telephone survey of 1000+ non-residential sites. Here are the highlights of their approach to this task: <9>

-- The phone list for this survey was Dun & Bradstreet's database of New Jersey business locations. Quotas were used to ensure that those actually surveyed represented the distribution of business types in the state. <10>

-- The survey script, designed with the assistance of COAH and Econsult, was constructed to determine the relationship between square footage and employees. <11> The survey was pre-tested on New Jersey businesses to identify inefficiencies in survey design, and revisions were made accordingly.

-- Professional market research interviewers conducted the telephone interviews, and all quality control and sample management measures common to the survey industry were employed to ensure data validity. <12>

-- While a number of jobs are largely independent of a particular physical location, particularly in the construction industry, we count those jobs, to the extent that even the most location-independent job is somehow associated with a particular location.

-- Self-reported building type data collected in the survey were checked against the State of New Jersey's Light Hazard Safety Database, the state's most comprehensive listing of organization names and building types. Where there were discrepancies, the state database was assumed to be correct.

-- Respondents were allowed to give more than one building type, thus leading to more observations than surveys.

-- To minimize the effect of outliers, we eliminated employees per square foot results that fell under the 10th percentile and over the 90th percentile for the dataset.

3.2 Survey Results

The survey of non-residential sites yielded 943 usable survey responses, which exhibited the following characteristics - depicted first by building type and second by industry group (see Figure 3.1 and Figure 3.2): <13>

Figure 3.1 - Non-Residential Survey Results

Employees per 1000 Square Feet, by Building Type

UCC Use Grp	Building Category	NJ Survey		
		Count	Median	Std Dev
B	Office	476	3.32	3.55
M	Retail	212	2.00	3.04
F	Factory	44	1.43	2.39
S	Storage	164	1.72	3.05
H	Manuf	16	1.83	2.18
A1	Theater	8	1.87	1.77
A2	Restaurant	51	3.75	3.97
A3	Library	65	1.88	3.18
A4	Arena	5	5.00	3.34
A5	Stadium	4	3.45	3.10
E	K-12	40	2.67	3.76
I	Hospital	14	3.40	2.06
R1	Hotel	15	2.50	1.68
U	Other	31	1.50	3.78
	Total	**1145**	**2.67**	**3.40**

Source: the reed group (2007)

Figure 3.2 - Non-Residential Survey Results

Employees per 1000 Square Feet, by Industry Group <14>

Industry	Median
Ag, Forestry, Fishing	2.67
Construction	2.86
Finance, Insr, Real Est	3.41
Higher Eduction	1.67
Manufacturing	1.50
Public Admin	4.87
Retail	2.50
Services	2.50
Transportation, Utilities	3.33
Wholesale Trade	2.86

Source: the reed group (2007)

Now we can compare these New Jersey results with the ratios determined from our national literature review and from COAH's current Appendix E ratios (see Figure 3.3):

Figure 3.3 - Survey Results vs. National Literature Review vs. Current COAH Rules

Employees per 1000 Square Feet

UCC Use Grp	Building Code	Building Category	Count	NJ Survey Median	Std Dev	Lit Review Median	Appendix E
B	1	Office	476	3.32	3.55	3.33	3.00
M	2	Retail	212	2.00	3.04	1.72	1.00
F	3	Factory	44	1.43	2.39	2.19	2.00
S	4	Storage	164	1.72	3.05	1.11	0.20
H	5	Manuf	16	1.83	2.18	2.19	1.00
A1	6	Theater	8	1.87	1.77	N/A	2.00
A2	7	Restaurant	51	3.75	3.97	6.80	3.00
A3	8	Library	65	1.88	3.18	N/A	3.00
A4	9	Arena	5	5.00	3.34	N/A	3.00
A5	10	Stadium	4	3.45	3.10	N/A	Exclude
E	11	K-12	40	2.67	3.76	0.92	1.00
I	12	Hospital	14	3.40	2.06	2.53	2.00
R1	13	Hotel	15	2.50	1.68	0.67	0.80
U	14	Other	31	1.50	3.78		Exclude
		Total	**1145**	**2.67**	**3.40**		

Source: the reed group (2007), Rutgers University (2006), COAH (2007).

3.3 Survey Analysis

Econsult was tasked with reviewing and potentially updating COAH's existing non-residential categories and ratios. Based on the results of our New Jersey survey, as compared to the current rules and to the national literature review we conducted, we would like to make the following commentary:

1) Office and 2) Retail - The ratio for both the New Jersey survey and the national literature review are higher than the current rules, possibly reflecting broader trends such as telecommuting, work sharing, and the increased role of the service industry in the wider economy.

3) Factory, 4) Storage, and 5) Manufacturing - These three categories are further subdivided by hazard level. From a personnel standpoint, it is difficult to use existing classifications to distinguish between low-density uses such as storage or machine-intensive manufacturing and high-density uses such as high-skill and labor-intensive manufacturing. <15> Since the ratios are not far from each other, one could make a case that the simplicity of collapsing these three categories into one category outweighs any accuracy gains in keeping them separate. For now, we recommend the retention of the existing categorizations. <16>

6) Theater, 8) Library, 9) Arena, and 10) Stadium - These four categories conceptually lend themselves to being collapsed into one category, since they represent similar uses and employment patterns; the results for the most part would support such a move. For now, we recommend the retention of the existing categorization. Stadiums are currently excluded from affordable housing requirements, but given the high proportion of low-skill employment they often generate, it is recommended to not exclude them from such calculations. <17>

7) Restaurant - This use is different enough from the previous four categories and from retail to merit its own category.

11) K-12 - The survey results are significantly higher than national averages and than the current rules. Perhaps this reflects the relatively low student-to-teacher ratio and the relatively high number of administrators in the state. Nevertheless, the relatively low sample size necessitates a greater reliance on the national numbers in offering a recommended ratio.

12) Hospital and 13) Hotel - Low sample sizes prevent a more conclusive assessment, so the national numbers are particularly useful here.

14) Other - More effort could go into reclassifying these buildings into one of the above uses, but these represent only a small portion of total survey observations and are unlikely to change over all conclusions regarding employment per square foot of construction. Many of these actual uses truly do not add any net new jobs and therefore the current policy of excluding this building type seems to make sense.

4.0 FINDINGS AND RECOMMENDATIONS

In this final section, we offer an updated Appendix E, based on our New Jersey survey and our national literature review of non-residential employment density. We also return to the initial discussions from Section 1, in terms of the logic behind the use of building space as a proxy for employment rather than employment projections themselves. Finally, we offer some guidance on how this analysis can be incorporated into future revised rules.

4.1 Proposed Building Types and Ratios

Econsult was tasked with reviewing and potentially updating COAH's existing non-residential categories and ratios. While similarities in results might suggest some reclassification of categories, we do not feel the evidence is strong enough to merit any reclassification at this time. Furthermore, there does not appear to be any major benefit to streamlining the categorizations, which would offset the loss in detail associated with combining building types.

As for ratios, our recommendations are largely informed by the New Jersey survey that was conducted for this very purpose. In fact, in most cases, our recommendations are the median ratios from the survey. However, where sample sizes were small or deviations from the current Appendix E ratios or the national literature review performed by performed by the Rutgers University Center for Urban Policy Research for the New Jersey Department of Community Affairs in 2006 were great, the national literature review results were given greater weight. <18>

Importantly, these ratios represent the relationship between employees and work space. <19> If instead we are considering employment density from a building-wide or even municipality-wide perspective, we must account for unused space, or else the number of employees estimated for a particular building or municipality will be overstated. Specifically, we consider that a not insignificant portion of most buildings, particularly in multi-tenant facilities, is common space: lobbies, hallways, stairwells, and other non-work space.

Since the intended use of these employment density ratios is to estimate the number of jobs associated with a municipality's intended growth in non-residential space, these adjustments are applicable; a calculation of jobs should take as its base on non-residential space the space that is actually occupied. Therefore, in order to translate our ratios for such a use, we must subtract out common space. <20>

To be sure, common space ratios vary widely over time, building type, and geography. Nevertheless, most industry reports report a common space ratio between 10 and 20 percent. We will therefore assume that 15 percent of building space is unused from an employment standpoint. Based on this approach and on our results and commentary from Section 3, we offer the following, updated building types and ratios (see Figure 4.1).

Figure 4.1 - Proposed Building Types and Ratios, Employees Per 1000 Square Feet

UCC Use Grp	Building Category	NJ Survey Median	Lit Review Median	Appendix E	Recommended Ratio, Net of 15% Common Space
B	Office	3.32	3.33	3.00	2.8
M	Retail	2.00	1.72	1.00	1.7
F	Factory	1.43	2.19	2.00	1.2
S	Storage	1.72	1.11	0.20	1.5
H	Manuf	1.83	2.19	1.00	1.6
A1	Theater	1.87	N/A	2.00	1.6
A2	Restaurant	3.75	6.80	3.00	3.2
A3	Library	1.88	N/A	3.00	1.6

UCC Use Grp	Building Category	NJ Survey Median	Lit Review Median	Appendix E	Recommended Ratio, Net of 15% Common Space
A4	Arena	5.00	N/A	3.00	3.4
A5	Stadium	3.45	N/A	Exclude	2.6
E	K-12	2.67	0.92	1.00	1.7
I	Hospital	3.40	2.53	2.00	2.6
R1	Hotel	2.50	0.67	0.80	1.7
U	Other	1.50		Exclude	Exclude

Source: Econsult Corporation (2007)

We also recognize that even within the universe of occupied space, at any given time buildings will experience some vacancies as a result of natural economic and real estate cycles at the local, regional, and national levels. This, of course, will tend to overestimate the number of jobs assigned to a building or a municipality: for example, a 100,000 square foot facility of a building type for which the employment density ratio is 2.0 employees per 1000 square feet would thus be estimated to hold 200 employees, even though at any given time, some portion of the facility is vacant and therefore has no employees in it. To the extent that employment growth continues to occur, this may lead to a further overstatement in raw number terms over time.

Like common space ratios, vacancy rates vary widely over time, building type, and geography. For new construction, this proportion is likely to be less than 10 percent. For the purposes of this analysis, we do not make any adjustment based on vacancy, but rather assign jobs to buildings assuming full occupancy. In this way, differing vacancy rates over time, building type, and geography do not affect the amount of affordable housing required, since all calculations are based on 100 percent occupancy.

4.2 Additional Recommendations

We must here address two important considerations first introduced in Section 1:

-- *Counting jobs via square footage rather than employment estimates is supportable.* Estimates of employment at the municipal level are not available in a timely manner. Only County Business Patterns data are available, but this data set has severe limitations, in that it is available only at the zip code level, which can cut across municipalities, and it also

covers only private sector employment. Moreover, the data are available only with a significant lag time. As we approach 2008, the latest County Business Patterns data are for 2005.

Knowing where new work space is being built and how much, on the other hand, is a stable and timely indicator of growth in a municipality. Moreover, municipalities currently track these construction data.

-- *Not counting redevelopment of vacant space.* As stated earlier, the New Jersey Appellate Division contended that since the intention of growth share is to assign affordable housing obligation where growth has occurred, redeveloped properties that do so even without adding new space should add to that obligation. However, consider the following example of a redevelopment that translates into new jobs:

An existing office building is rehabilitated, and its resulting attractiveness leads to higher occupancy. Here is a situation in which a high-vacancy or completely unoccupied building becomes a low-vacancy or no-vacancy building. Therefore, the municipality has experienced an increase in employment density. However, it first had to experience a decrease in that employment density, since it is assumed that the building was once more fully occupied and then began to experience vacancies. In other words, that building's square footage, and the associated affordable housing obligation, was properly assigned to the municipality upon its initial construction; and as the building emptied, that affordable housing obligation was not adjusted accordingly, but was assumed to be commensurate with the building's square footage.

As this example illustrates, redevelopments that lead to increases in employment density are *either already accounted for using the existing mechanisms of counting jobs at the municipal level, or they are simply offsetting previous decreases in employment density*, such that there really is no net new affordable housing obligation created. Nevertheless, in cases of buildings becoming completely unoccupied, and then subsequently redeveloped and fully occupied, COAH may want to consider augmenting its current mechanisms by tracking such situations such that cases in which buildings become completely vacant and stay that way for a certain period of time are then removed from a municipality's square footage totals, and then added back in if they are subsequently redeveloped and re-occupied.

As suggested earlier, it will be important to conduct periodic surveys in subsequent years, to *monitor any major changes in employment density by building type*. Future surveys can utilize and build from lessons learned from this report to further hone our understanding of this important measure. For example, subsequent surveys may seek additional detail on vacancies, <21> distinct sub-types within existing building types, <22> or year of building construction. <23>

<1> New Jersey Administrative Code 5:94-2:4. Appendix E of the Third Round rules is included in this report - see Appendix A.

<2> New Jersey Administrative Code 5:94-2:4. The current Appendix E of the Third Round rules is included in this report - see Appendix A.

<3> See page 8 and 82 of the court opinion.

<4> See page 86-87 of the court opinion.

<5> See page 85-89 of the court opinion.

<6> Page 83 of the court opinion.

<7> Center for Urban Policy Research, Edward J. Bloustein School of Planning & Public Policy, Rutgers University

(August 2006).

<8> See also Appendix B for a full bibliography of reports reviewed, and Appendix C for a comprehensive table of non-residential multipliers based on the New Jersey Demographic Multipliers report and on our own literature review.

<9> See Appendix D for a more detailed explanation of the survey methodology and Appendix E for tables related to the quotas employed to ensure accurate representation of all business types.

<10> Because of specific interest expressed by COAH regarding institutions of higher education, these locations were over-sampled.

<11> See Appendix F for the actual survey script.

<12> For example, clusters of phone numbers are called up to five times before moving on, ensuring that harder to reach respondents have a better chance of being included in the sample.

<13> The sample size for survey results by building type is larger because respondents were allowed to label their location as more than one building type.

<14> There were no responses from mining companies, so they are not included in this table. See Appendix G for more detail on higher education.

<15> See Appendix G for additional detail on the distribution of employees per 1000 square feet in these three building categories.

<16> Parking garages are a subset of the storage facility that likely have distinctly lower densities of employees per 1000 square feet. Our survey did not allow for the identification of parking garages, nor are they currently treated as a different building type, but they could be in the future.

<17> Our survey responses included a fair amount of part-time employees for arena respondents, although not for stadium respondents. This is a factor in the determination of our recommended ratios. See Appendix G for more detail.

<18> Survey medians were used in all recommendations except for the following: survey results for Arena, Stadium, K-12, Hospital, and Hotel were all substantially higher than national literature review medians and current Appendix E ratios, and sample sizes were small, so ratios were increased but not to the level of the survey medians. The Arena recommendation is further guided by the existence of a not insignificant number of part-time employees in those survey responses.

<19> Studies incorporated in our national literature review are also concerned with the employment density ratio as defined in this way.

<20> Another approach that could be considered for the future is to augment ongoing surveying of New Jersey firms, who as individual firms do not concern themselves as much with common space, with a survey of building managers, who would concern themselves with such matters and who would know such figures.

<21> Ratios of employees per 1000 square feet account for a normal level of vacancy. There is a natural cyclicality to vacancies not unlike other cycles in the real estate market. Thus, even though using a constant ratio for estimating employees per 1000 square feet may translate to temporary overestimates or underestimates of actual jobs within a municipality when vacancy rates are low or high, these fluctuations will tend to even out over time.

<22> For example, in the factory, storage, and manufacturing categories, there are clearly uses that are more labor-intensive or less labor-intensive; for example, manufacturing spaces can be almost completely automated to the point of very low employment densities, or they may require high employment densities. Additional survey questions may provide useful data in identifying more accurate ratios.

<23> It may be determined from such surveying, for example, that there are fundamental differences in employment density between existing buildings and newly constructed ones.

APPENDIX A - CURRENT APPENDIX E OF THE THIRD ROUND RULES

APPENDIX E
UCC USE GROUPS FOR
PROJECTING AND IMPLEMENTING
NONRESIDENTIAL COMPONENTS OF GROWTH SHARE
13-Jul-04

A one in 25 non-residential ratio shall be used to determine the number of affordable units to be created for each new job

Use Group	Description	SF Generating One Affordable Unit	Jobs Per 1,000 Square Feet
B	Office buildings. Places where business transactions of all kinds occur. Includes banks, corporate offices, government offices, professional offices, car showrooms and outpatient clinics.	8,333	3
M	Mercantile uses. Buildings used to display and sell products. Includes retail stores, strip malls, shops and gas stations.	25,000	1
F	Factories where people make, process, or assemble products. Includes automobile manufacturers, electric power plants, foundries, and incinerators. F use group includes F1 and F2.	12,500	2
S	Storage uses. Includes warehouses, parking garages, lumberyards, and aircraft hangers. S group includes S1 and S2. .	125,000	0.2
H	High Hazard manufacturing, processing, generation and storage uses. H group includes H1, H2, H3, H4 and H5.	25,000	1
A1	Assembly uses including concert halls and TV studios.	12,500	2
A2	Assembly uses including casinos, night clubs, restaurants and taverns.	8,333	3
A3	Assembly uses including libraries, lecture halls, arcades, galleries, bowling alleys, funeral parlors, gymnasiums and museums but excluding houses of worship	8,333	3
A4	Assembly uses including arenas, skating rinks and pools.	8,333	3
A5	Assembly uses including bleachers, grandstands, amusement park structures and stadiums	Exclude	Exclude
E	Schools K – 12	25,000	1
I	Institutional uses such as hospitals, nursing homes, assisted living facilities and jails. I group includes I1, I2, I3 and I4.	12,500	2
R1	Hotels and motels	31,250	0.8
U	Miscellaneous uses. Fences tanks, barns, agricultural buildings, sheds, greenhouses, etc.	Exclude	Exclude

Source: New Jersey Council on Affordable Housing (2006)

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APPENDIX B - FULL BIBLIOGRAPHY OF REPORTS INCLUDED IN NATIONAL LITERATURE REVIEW

Abbreviations are used in Appendix C - Comprehensive Table of Non-Residential Multipliers (based on 2006 New Jersey Demographic Multipliers Study and on literature review).

-- ARES - "Industrial Employment Densities," American Real Estate Society (1997).

-- BOMA - "Office Space Utilization Rates," Building Owners and Managers Association (1996).

-- CADOE - "Pacific Gas & Electric Survey," California Department of Energy (1996).

-- CBECS - "Commercial Buildings Energy Consumption Survey," US Department of Energy (2003).

-- CRT - "Census of Retail Trade," US Census Bureau (1997).

-- LAEDC - "Redeveloping Obsolete Industrial Land with Modern Manufacturing Facilities: The Job, Wage, and Tax Implications for State and Local Government," Los Angeles County Economic Development Corporation (2000).

-- MARTIN - "The Economic Impacts of the Value Added Regional Distribution Industry in the Portland Area," Martin Associates (2003).

-- METRO - "Employment Density Study," Metro (1999).

-- NELSON - "Planner's Estimating Guide: Projecting Land Use and Facility Needs," Arthur Nelson (2004).

-- OTAK - "Phase 3: Regional Industrial Land Study for the Portland-Vancouver Metropolitan Area," Otak Inc. (2001).

-- PARKGEN - "Parking Generation 2nd Edition," Institute of Transportation Engineers (1987).

-- SANDAG - "Evaluation of Growth Slowing Policies for the San Diego Region," San Diego Association of Governments (2001).

-- SFPD - "Community Planning in the Eastern Neighborhoods: Rezoning Options Workbook," San Francisco Planning Department (2003).

-- TRIPGEN5 - "Trip Generation 5th Edition," Institute of Transportation Engineers (1991).

-- TRIPGEN6 - "Trip Generation 6th Edition," Institute of Transportation Engineers (1997).

-- USEPA - "Energy Star Hospitality Facts," US Environmental Protection Agency (2002).

-- USIRS - "The Internal Revenue Service Faces Significant Challenges to Reduce Underused Office Space Costing $ 84 Million Annually," US Department of the Treasury (2004).

-- WASTATE - "Industrial Land Supply and Demand in the Central Puget Sound Region," Puget Sound Regional Council (1998).

APPENDIX C - COMPREHENSIVE TABLE OF NON-RESIDENTIAL MULTIPLIERS (BASED ON 2006 NEW JERSEY DEMOGRAPHIC MULTIPLIERS STUDY AND ON NATIONAL LITERATURE REVIEW)

Abbreviations are taken from Appendix B - Full Bibliography of Reports Included in Literature Review. Shaded rows represent reports not included in the 2006 New Jersey Demographic Multipliers study.

Non-Res Use	Source	Year	Empl/1000SF
I. Commercial			
A. Office	PARKGEN	1987	2.68
	TRIPGEN5	1991	3.30
	CADOE (large)	1996	2.56
	CADOE (small)	1996	3.58
	TRIPGEN6	1997	4.00
	BOMA	1997	3.55
	WASTATE	1998	3.07
	METRO	1999	3.64
	LAEDC	2000	3.51
	SANDAG	2001	3.21
	CBECS (NE)	2001	2.99
	SFPD	2003	3.33
	NELSON	2004	3.05
	RUTGERS	2004	4.27
	USIRS	2004	4.34
B. Retail	CADOE	1996	1.70
	CRT	1997	2.44
	TRIPGEN6	1997	2.00
	WASTATE	1998	0.57
	METRO	1999	1.67
	LAEDC	2000	1.87
	CBECS (NE)	2001	1.72
	SANDAG	2001	1.70
	NELSON	2004	2.48
C. Eating & Drinking	TRIPGEN5 (restaurant)	1991	8.70
	TRIPGEN5 (fast food)	1991	14.29
	CADOE	1996	4.90
	CBECS (NE)	2001	0.38

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Non-Res Use	Source	Year	Empl/1000SF
II. Industrial			
A. Warehouse	PARKGEN	1987	0.46
	TRIPGEN5	1991	1.28
	CADOE	1996	0.70
	ARES	1997	1.58
	TRIPGEN6	1997	1.28
	METRO	1999	0.59
	LAEDC	2000	1.28
	CBECS (NE)	2001	1.11
	OTAK	2001	0.82
	MARTIN	2003	0.55
	SFPD	2003	1.92
	RUTGERS	2006	0.20
B. Manufacturing & Industry	PARKGEN	1987	2.42
	TRIPGEN5	1991	1.96
	ARES	1997	2.61
	TRIPGEN6	1997	1.82
	WASTATE	1998	1.70
	METRO	1999	1.43
	LAEDC	2000	2.65
	OTAK	2001	1.85
	SANDAG	2001	3.40
	NELSON	2004	4.76
III. Hospitality and Other			
A. Lodging	CADOE	1996	0.79
	METRO	1999	0.67
	CBECS	2001	0.43
	SANDAG	2001	1.10
	USEPA	2002	0.57
B. Health	CADOE	1996	2.99
	TRIPGEN6	1997	3.25
	WASTATE	1998	2.00
	METRO	1999	2.43
	CBECS	2001	2.18
	NELSON	2004	2.62
C. Schools	CADOE	1996	1.19
	TRIPGEN6	1997	0.92
	CBECS	2001	0.77

Source: various

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National Literature Review - Summary Table

Non-Res Use	Min	Max	Median	Mean	StdDev	Recom
I. Commercial						
A. Office	2.56	4.34	3.33	3.41	0.52	3.0-4.0
B. Retail	0.57	2.48	1.72	1.79	0.56	1.0-2.0
C. Eating & Drinking	0.38	14.29	6.80	7.07	5.89	3.0-4.0
II. Industrial						
A. Warehouse	0.46	1.92	1.11	1.05	0.47	0.2-0.8
B. Manufacturing & Industry	1.43	4.76	2.19	2.46	0.99	1.0-2.0
III. Hospitality and Other						
A. Lodging	0.43	1.10	0.67	0.71	0.25	0.5-1.0
B. Health	2.00	3.25	2.53	2.58	0.48	2.0-3.0
C. Schools	0.77	1.19	0.92	0.96	0.21	0.8-1.2

Source: various

APPENDIX D - NEW JERSEY SURVEY METHODOLOGY

Click here for image

M E M O R A N D U M

To: Lee Huang, Econsult

From: Ted Reed and Jennie Mabee

Re: Marketing Research Methodology, COAH project FINAL

Date: September 4, 2007

Sampling Methodology

Sample Source

The most comprehensive listing of businesses and business locations in New Jersey is provided by Dun and Bradstreet (D&B). Although D&B tends to under-represent new businesses and small businesses, it is the most comprehensive publicly available list of businesses and business locations in the state.

A Census of Businesses

For this project we obtained two sets of counts for business in New Jersey. The first is a complete enumeration of business headquarters and single site locations, broken out by two digit SICs and by number of employees. Based on this listing, there are 294,236 businesses of all types (including not for profits and public agencies) operating in the state

of New Jersey in June 2007. The full breakout is provided in Appendix A to this memo. The second count is of all business locations in the state. This count recognizes that some businesses operate out of multiple locations. In June 2007 businesses in New Jersey were operating out of 328,632 locations. Since we want our numbers to reflect all business locations (again including not for profits and public agencies), we have used this distribution of business locations in the state as the universe from which we have drawn our sample of businesses. It will be noted that the number of business locations exceeds the number of headquarters and single site locations by 34,396 business sites. The distribution of these business locations by SIC and number of employees is included in Appendix E.

Sample of Business Locations

From this total listing we have selected a sample of business locations in proportion to the incidence of businesses in each size (number of employees) x SIC cell in the matrix of businesses included in Appendix A. Because of specific interest expressed by COAH in information on institutions of higher education (SIC 8221 and 8222) we over sampled within this SIC. The total number of business locations sampled was 42,200. This represents 42,000 business locations sampled at random and a supplemental sample of 200 businesses in higher education. This supplemental sample was drawn in proportion to the number of locations in each employee size category. Details on the distribution of the final sample are included in Appendix E.

Based on the distribution of industries and company sizes in New Jersey, targets for each industry and company size grouping were established (see Appendix E). These targets were designed to ensure adequate representation of the many types of businesses in the final data set. The final distribution of interviews appears in Appendix E.

Data Collection Methodology

Questionnaire Design

The questionnaire was developed with input from COAH in order to ensure that the survey collected all data required to perform the desired analyses. The survey was designed to capture critical information about how New Jersey businesses utilize their space and the relationship between square footage and number/type of employees. Key survey information collected included:

-- Total company size (number of employees)

-- Location size (number of employees at this location) including detailed information about distribution of full and part time employees as well as distribution of employees who work on and off-site

-- Self-reported UCC building type

-- Total square footage occupied including proportion of that space accounted for by public or common areas, square footage not currently in use and a detailed breakout of how space is used

-- Primary business (industry)

-- Types of jobs performed at the location and distribution of employees by each job type

The survey instrument appears in Appendix F.

Survey Pre-Test

The survey was pre-tested on a limited sample of New Jersey businesses to identify any problems in survey design prior

to launching data collection. Revisions were made based on this pre-test to improve survey flow and quality of information collected.

Data Collection

Data were collected by professional market research interviewers in personal telephone interviews. Interviews were conducted incorporating stringent protocols to ensure data quality and validity. Data collection quality control measures included:

-- Each interviewer was personally briefed by a Senior Project Director who is knowledgeable about project objectives as well as the sensitivity of the research

-- Each interviewer completed multiple practice surveys with supervisors acting as respondents to ensure that all interviewers were familiar and comfortable with the survey before contacting potential respondents

-- 20% of each interviewer's work was validated by a supervisor

-- 10% of each interviewer's work was live monitored by a supervisor

-- 10% of each interviewers work was validated via phone follow up with the respondent by a supervisor

-- No more than 25% of the total quota completed by a single interviewer

Sample Management

Sample was administered via computer and all sample information for each respondent was recorded in the final survey data file. Sample was grouped into 21 sub-files, or replicates, with approximately 1,000 cases each. Replicates were randomly complied so that industry and size categories were represented in proportion to the overall sample. Interviewers were required to make a minimum of five attempts on each number in a replicate before moving on to the next replicate. This system ensures that harder to reach respondents have an equal chance of being included in the sample.

In addition, survey participants were entered into a lottery drawing for one of 10 Apple iPods in appreciation for their time. Providing an incentive promotes participation among less motivated respondents who might other wise exclude themselves from the sample.

Quality Control Measures for Data Integrity

CATI Survey Administration

The survey was programmed for computer administration. Using this CATI (computer assisted telephone interviewing) approach enables interviewers to focus on keeping the respondent engaged and collecting meaningful information rather than following the complicated skip patterns and instructions this survey entailed. In addition, multiple checks to ensure consistency of responses across related questions were programmed into the survey to allow interviewers to clarify and, if needed, correct inconsistent or inaccurate responses during the interview.

Data Cleaning and Verification

Throughout the data collection period, data were reviewed and cleaned to ensure that responses followed a consistent pattern and identify any irregularities requiring clarification or verification. Data irregularities such as contradictory

responses, incomplete responses or extreme numerical values (outliers) were validated with a follow-up call to the respondent.

Verification of UCC Building Types

Self-reported UCC building type data collected in the survey were checked against the "Light Hazard Safety Database" complied by the State of New Jersey. Where discrepancies existed, the "Light Hazard Safety Database" categorization took precedence.

APPENDIX E – NEW JERSEY BUSINESS COUNTS AND QUOTAS

Table E.1 - New Jersey Business Universe Counts – Headquarters and Unique Locations

# employees	Industry											
	Agriculture/ Forestry/ Fishing	Mining	Retail Trade	Con-struction	Finance/ Insurance/ /Real Estate	Services (excl Higher Ed)	Higher Education (subset of services)	Manu-facturing	Transportation/ Public Utilities	Public Admin	Wholesale Trade	Total
1 – 50	7,943	135	46,972	31,651	20,663	134,215	40	14,408	10,979	687	17,180	284,873
51-100	32	5	603	233	347	1,702	0	673	296	153	408	4,452
101-249	8	1	178	98	203	996	6	487	161	158	226	2,522
250-499	3	1	60	32	89	463	11	183	74	67	89	1,072
500-999	1	0	37	4	50	219	14	115	45	28	40	553
1,000 or more	1	1	74	6	70	291	18	186	49	40	28	764
TOTAL	7,988	143	47,924	32,024	21,422	137,886	89	16,052	11,604	1,133	17,971	294,236

Source: Dun & Bradstreet (2007)

Click here for image

Table E.2 - New Jersey Business Universe Counts – All New Jersey Business Locations

# employees	Industry											
	Agriculture/ Forestry/ Fishing	Mining	Retail Trade	Con-struction	Finance/ Insurance/ /Real Estate	Services (excl Higher Ed)	Higher Education	Manu-facturing	Transportation/ Public Utilities	Public Admin	Wholesale Trade	Total
1 – 50	7,985	141	48,107	31,899	21,371	136,317	42	14,679	11,423	894	17,690	290,548
51-100	43	6	871	276	649	2,512	0	797	415	422	569	6,560
101-249	16	3	494	137	577	2,122	13	634	353	699	476	5,524
250-499	9	9	313	62	294	1,596	20	311	192	440	242	3,488
500-999	7	3	373	23	342	1,250	36	240	144	195	174	2,787
1,000 or more	43	12	5,806	115	3,082	5,307	118	1,082	1,624	1,635	901	19,725
TOTAL	8,103	174	55,964	32,512	26,315	149,104	229	17,743	14,151	4,285	20,052	328,632

Source: Dun & Bradstreet (2007)

Click here for image

Table E.3 - Completed Surveys by Industry and Company Size

# employees	Industry											
	Agriculture/ Forestry/ Fishing	Mining	Retail Trade	Con-struction	Finance/ Insurance/ /Real Estate	Services (excl Higher Ed)	Higher Education	Manu-facturing	Transportati on/ Public Utilities	Public Admin	Wholesale Trade	Total
1 – 50	27	1	168	113	85	473	2	56	40	6	65	1,036
51-100	0	0	4	1	0	6	0	2	1	2	2	18
101-249	0	0	3	2	1	12	1	3	2	3	2	29
250-499	0	0	3	0	0	5	0	0	0	1	0	9
500-999	0	0	1	0	1	4	3	1	0	0	0	10
1,000 or more	1	0	23	1	8	25	4	1	8	4	3	78
TOTAL	28	1	202	117	95	525	10	63	51	16	72	1,180

Source: the reed group (2007)

Table E.4 - Space by Employee Survey

BUILDING TYPE (FROM Q.S4 – COMPLETES CAN FALL INTO MULTIPLE GROUPS)	TARGET	INDUSTRY(FROM SAMPLE)	TARGET	COMPANY SIZE (FROM Q.S1)	TARGET
Place where business transactions take place	100	Ag, Forestry, Fishing (01-09)	29	1 – 50	1039
Place where products displayed/sold	100	Mining (12 – 14)	1	51-100	24
Factory	100	Retail (52 – 59)	201	101-249	20
Storage facility	100	Construction (15 – 17)	116	250-499	13
High hazard manufacturing/ storage	100	Finance, Insurance, Real Estate (60 – 67)	94	500-999	11
Theater/concert hall/TV studio	100	Services (70 – 89, excluding codes 8221 and 8222)	529	1000+	74
Restaurant/night club/ tavern/casino	100	Higher education (codes 8221 and 8222)	10		
Site of library/lecture hall(s)/arcades, etc.	100	Manufacturing (20 – 39)	63		
Arena	100	Transportation, Utilities (40 – 49)	51		
Stadium	100	Public Admin (91 – 97)	15		
School	100	Wholesale Trade (50 – 51)	72		
Hospital/nursing home/assisted living facility etc	100				
Hotel, motel or dormitory	100				
Other	100				
TOTAL= 1400					

Source: the reed group(2007)

Click here for image

APPENDIX F - NEW JERSEY SURVEY SCRIPT

(ASK TO SPEAK TO A MANAGER WHO IS KNOWLEDGEABLE ABOUT THE NUMBER OF EMPLOYEES AND SQUARE FOOTAGE USED AT THIS LOCATION. IN SMALLER COMPANIES, THIS COULD BE THE OWNER, OFFICE MANAGER OR GENERAL MANAGER, IN LARGER COMPANIES START IN THE HUMAN RESOURCES DEPARTMENTAND TRY TO GET A REFERRAL TO SOMEONE WHO CAN ANSWER THE QUESTIONS)

I am calling from reed/group, an independent market research company in Philadelphia. We are doing a very brief survey designed to understand how different businesses use their space and we'd like to include your company's input. The survey should take no more than 5 minutes of your time. If you qualify and complete the interview, we will enter you into a drawing to win one of 10 Apple iPods valued at $ 250. (**IF RESPONDENT ASKS,** Your chances of winning are 1 in 140)

Screener

S1. Including yourself, how many full- and part-time employees does your company have in total, that is, at all locations including all the divisions, subsidiaries and branches of your company? If your company owns any franchise locations, please include these as well. Please include all full and part time employees and any employees who telecommute or work primarily off-site.

(READ ONLY IF RESPONDENT SAYS DON'T KNOW)

If you cannot provide an exact number, please just give us your best estimate. **Please check one answer**

[_____] TOTAL EMPLOYEES ALL COMPANY LOCATIONS

Interviewer: Is this an actual figure or an estimate? **Check one**

[ ] Actual

[ ] Estimate

(DATA CLEANING NOTE: RESPONSE IN Q.S1 SHOULD BE CHECKED AGAINST SAMPLE INFORMATION, IF MORE THAN 10% DIFFERENCE IN THE TWO FIGURES, FLAG FOR REVIEW AND VERIFICATION)

S2. Does this company have more than one location?

[ ] Yes ***READ:*** For the rest of this survey, please answer questions in terms of this location

[ ] No ***(SKIP TO Q.S3B/C)***

[ ] Don't know/Refused ***(TERMINATE)***

S3A. Including yourself, how many of those ***(ANSWER FROM Q.S1)*** employees are on the payroll **for this company location**? Please include all full and part time employees as well as any employees who telecommute or work primarily offsite. ***(READ ONLY IF RESPONDENT SAYS "DON'T KNOW")*** If you cannot provide an exact number, please give us your best estimate. ***(RESPONDENT MUST PROVIDE A WHOLE NUMBER, DO NOT ACCEPT A RANGE, IF DON'T KNOW OR REFUSED, TERMINATE)***

S3B/C. How many of the ***(FIGURE FROM Q.S1A OR S.3A)*** employees are full-time? How many are part-time? ***(IF UNABLE TO PROVIDE RAW NUMBER, MAY PROVIDE PERCENTAGE INSTEAD.***

PERCENTAGES MUST = 100, SUM OF NUMERICAL RESPONSES TO Q.S3B + Q.S3C MUST = RESPONSE FROM Q.S1A, ALLOW DON'T KNOW AND REFUSED)

	Type of Employee	Number	RANGE OF RESPONSES
QS3A	Total		**0 TO 999,999** **DK/REF TERMINATE** **Interviewer:** Is this an actual figure or an estimate? Check one [ ] Actual [ ] Estimate

(CHECK COMPANY SIZE TARGETS BEFORE CONTINUING)

QS3B	Full-Time	**0 TO 100** **OR 0 TO Q.S3A** **ALLOW DK/REF**
QS3C	Part-time	**0 TO 100 OR** **0 TO Q.S3A** **ALLOW DK/REF**

Interviewer: Are these figures actual or estimates? **(ONLY COLLECT THIS ONCE FOR Q.S3B AND Q.S3C)** Actual Estimate

S3D. Do any of your full or part time employees telecommute or spend most of their time working off-site?

[ ] Yes

[ ] No ***(SKIP TO Q.S4)***

S3E. How many of the ***(FIGURE FROM Q.S3B)*** full time employees on the payroll at this location telecommute or spend most of their time working offsite? ***(IF UNABLE TO PROVIDE RAW NUMBER, MAY PROVIDE PERCENTAGE INSTEAD. PERCENTAGE RANGE OF RESPONSES = 0 TO 100; RAW NUMBER RANGE OF RESPONSES IS 0 TO Q.S3B RESPONSE, ALLOW DON'T KNOW AND REFUSED, IF 0 SKIP TO Q.S3G)***

S3F. And, how many of those ***(FIGURE FROM Q.S3E)*** employees spend ANY of their time working in New Jersey? ***(IF UNABLE TO PROVIDE RAW NUMBER, MAY PROVIDE PERCENTAGE INSTEAD.***

PERCENTAGE RANGE OF RESPONSES = 0 TO 100; RAW NUMBER RANGE OF RESPONSES IS 0 TO Q.S3E RESPONSE, ALLOW DON'T KNOW AND REFUSED)

S3G. How many of the ***(FIGURE FROM S.3C)*** part time employees on the payroll at this location telecommute or spend most of their time working offsite? ***(IF UNABLE TO PROVIDE RAW NUMBER, MAY PROVIDE PERCENTAGE INSTEAD. PERCENTAGE RANGE OF RESPONSES = 0 TO 100; RAW NUMBER RANGE OF RESPONSES IS 0 TO Q.S3C RESPONSE, ALLOW DON'T KNOW AND REFUSED, IF 0 SKIP TO Q.S4)***

S3H. And, how many of those ***(FIGURE FROM Q.S3G)*** employees spend ANY of their time working in New Jersey? ***(IF UNABLE TO PROVIDE RAW NUMBER, MAY PROVIDE PERCENTAGE INSTEAD. PERCENTAGE RANGE OF RESPONSES = 0 TO 100; RAW NUMBER RANGE OF RESPONSES IS 0 TO Q.S3G RESPONSE, ALLOW DON'T KNOW AND REFUSED)***

QS3E	Full-Time Work off-site or telecommute	**0 TO 100 OR 0 TO Q.S3B RESPONSE ALLOW DK/REF IF 0, DK OR REF, SKIP TO Q.S3G**
QS3F	Full-Time Work off-site or telecommute Any Time in NJ	**0 TO 100 OR 0 TO Q.S3E RESPONSE ALLOW DK/REF**
QS3G	Part-Time Work off-site or telecommute	**0 TO 100 OR 0 TO Q.S3C RESPONSE ALLOW DK/REF IF 0, DK OR REF, SKIP TO Q.S4**
QS3H	Part-Time Work off-site or telecommute Any Time in NJ	**0 TO 100 OR 0 TO Q.S3G RESPONSE ALLOW DK/REF**

Interviewer: Are these figures actual or estimates? **(ONLY COLLECT THIS ONCE FOR Q.3SE THROUGH Q.3SH)**

[ ] Actual [ ] Estimate

S4. Now please think about the building in which your company is located. Please tell me which one of the following best describes how this building is used. ***(READ LIST, STARTING AT POINT WHICH SEEMS MOST APPROPRIATE GIVEN RESPODENT'S INDUSTRY; ACCEPT MULTIPLE RESPONSES)***

Is this building. . . ***(READ)*** . . .?

[ ] A **place where business transactions take place**, such as a bank, corporate or government office, professional or medical office, car showroom or outpatient clinic

[ ] A **place where products are displayed and sold** such as retail stores, strip malls, shops or gas stations

[ ] **Any type of factory**, power plant, foundry or incinerator

[ ] A **storage facility** such as a warehouse, parking garage, lumberyard or aircraft hangar

[ ] A **high hazard manufacturing** or storage facility

[ ] A **theater, concert hall or TV studio**

[ ] A **restaurant, night club, tavern, casino** or other similar business

[ ] The **site of a library, lecture hall(s), arcades,** bowling alley, funeral parlor, or gymnasium

[ ] An **arena**, such as an ice skating rink or pool

[ ] A **stadium**, amusement park structure, grandstands, or bleachers

[ ] A **school** for K - 12

[ ] A **hospital, nursing home, assisted living facility** or jail

[ ] A **hotel, motel or dormitory**

[ ] Some other type of building I haven't mentioned?

(SPECIFY) _____

CHECK BUILDING TYPE TARGETS BEFORE CONITINUING

S5A. What is the total square footage your company occupies at this location? Please include all space whether it is currently being used or not. ***(READ ONLY IF RESPONDENT SAYS, "DON'T KNOW")*** If you cannot provide an exact number, please give us your best estimate. ***(DO NOT ACCEPT A RANGE, IF DON'T KNOW OR REFUSED, TERMINATE)***

[_____] Total Square Footage

Interviewer: Is this figure actual or an estimate?

[ ] Actual

[ ] Estimate

S5B. Does that figure include a share of common or public space? By common or public space, we mean areas such as rest rooms and hallways.

[ ] Yes

[ ] No ***(SKIP TO Q.5D)***

[ ] Don't know ***(SKIP TO Q.5D)***

S5C. What is the square footage of common or public space included in your total square footage? ***(IF RESPONDENT CAN NOT PROVIDE A RAW NUMBER, ACCEPT A PERCENTAGE, RANGE OF RESPONSES FOR RAW NUMBER IS 1 TO Q.S3A RESPONSE, RANGE OF RESPONSES FOR PERCENTAGES IS 1 TO 100, ALLOW DON'T KNOW AND REFUSED)***

[_____] Square Feet or % Common or Public Space

Interviewer: Is this figure actual or an estimate?

[ ] Actual

[ ] Estimate

S5D. Out of 100%, what proportion of that ***(ANSWER FROM Q.S5A)*** square feet is currently **not being used**? ***(READ ONLY IF RESPONDENT SAYS "DON'T KNOW")*** If you can not provide an exact number, please give us your best estimate. ***(IF RESPONDENT CAN NOT PROVIDE A RAW NUMBER, ACCEPT A PERCENTAGE, RANGE OF RESPONSES FOR RAW NUMBER IS 1 TO Q.S5A RESPONSE, RANGE OF RESPONSES FOR PERCENTAGES IS 1 TO 100, ALLOW DON'T KNOW AND REFUSED)***

[_____] Total Square Footage or % Not in Use

Interviewer: Is this figure actual or an estimate?

[ ] Actual

[ ] Estimate

1. How would you describe your company's primary business? ***(RECORD RESPONSE VERBATIM)***

PRIMARY
BUSINESS:

(DATA PROCESSING NOTE: CODE RESPONSES TO THE INDUSTRY LIST BELOW)

(1) Accommodation and Food Services (including hotels, motels, restaurants)

(2) Administrative and Support Services (including call centers, employment agencies, professional organizations, collection agencies, credit bureaus, travel agents, security services including guards, armored cars, exterminators, janitorial, landscapers)

(3) Agriculture, Forestry, Fishing and Hunting

(4) Arts, Entertainment, and Recreation (including all types of entertainment and casinos, golf courses, skiing facilities)

(5) Construction and specialized trade contracting

(6) Educational Services (including all types of schools)

(7) Finance and Insurance

(8) Health Care and Social Assistance (including all types of physicians, social services for youth, elderly and other groups and health care facilities such as nursing homes, rehab, as well as vocational rehab and day care organizations)

(9) Information/Telecommunications/Data Hosting and Transmission (including books, newspapers, magazines, television, motion pictures, radio, telephone, internet, etc.)

(10) Manufacturing

(11) Management of Companies and Enterprises (including holding companies)

(12) Mining, Quarrying, and Oil and Gas Extraction

(13) Other Services (except Public Administration) (including all auto mechanic related jobs, repair services, personal care services, non-veterinary pet services, religious, civic and social organizations)

(14) Professional, Scientific, and Technical Services (including lawyers, engineers, accountants, architects, scientist, advertising/marketing consultants, veterinarians)

(15) Public Administration/Government

(16) Real Estate, Rental and Leasing

(17) Retail Trade (all types of goods including mail order, catalog, online sales)

(18) Transportation and Warehousing (including all types of transportation, mailing/shipping/messenger/delivery services, and all types of warehousing)

(19) Utilities

(20) Waste Management and Remediation Services (including waste collection)

(21) Wholesale Trade (all types of goods)

(22) Something else

2A. Now I'd like to understand what type of work is performed at this location. First of all, what types of staff do you have at this location? I am looking for categories like management, operations, production workers, etc. or categories like those that can be used for payroll. ***(FILL IN CATEGORIES BELOW, DO NOT ALLOW DON'T KNOW OR REFUSED)***

2B. Out of 100%, what percent of the total employees at this location are represented by each of the types of jobs you mentioned? Please include both full and part time employees but do not include employees who telecommute or work primarily offsite.

What percent of the employees working at this location are in. . . ***(READ EACH JOB CATEGORY)***. . . ? ***(IF DON'T KNOW, READ)*** If you can not give me an exact figure, please just give me your best estimate. ***(IF RESPONDENT CAN NOT PROVIDE PERCENTAGES, ACCEPT RAW NUMBERS, RANGE OF RESPONSES FOR RAW NUMBERS IS O TO Q.S3A, RAW NUMBERS MUST ADD TO Q.S3; RANGE OF RESPONSES FOR PERCENTAGES IS 1 TO 100, MUST ADD TO 100% ALLOW DON'T KNOW AND REFUSED)***

JOB CATEGORY (ALLOW UP TO 10)	PERCENT OF EMPLOYEES AT THIS LOCATION
TOTAL	100% OR Q.S3

Interviewer: Is this figure actual or an estimate?

[ ] Actual

[ ] Estimate

(DATA PROCESSING NOTE: USE LIST BELOW AS CODE LIST FOR JOB TYPES IN Q.2A/Q.2B)

Q2A/Q2B Job Types

(1) Management staff including top executives, Advertising, Marketing, Promotions, Public Relations, and Sales Managers, Operations Specialties Managers as well as all other managers and administrators

(2) Business operations specialists such as buyers, purchasing agents, entertainment agents, claims adjusters, appraisers, examiners, cost estimators, emergency management specialists, human resources professionals, business analysts, convention planners

(3) Financial Specialists including accountants, budget analysts, financial analysts/advisors, loan officers, appraisers, etc.

(4) Computer and mathematical staff including computer programmers, engineers, scientists, support specialists, actuaries, statisticians, mathematicians,

(5) Architects/engineers including surveyors, cartographers, drafters

(6) Scientists

(7) Community and Social Services staff including social workers, counselors, religious workers, clergy

(8) Legal staff including lawyers, judges, legal support staff

(9) Education, Training, and Library staff including teachers at all levels and school support staff

(10) Arts, Design, Entertainment, Sports, and Media staff including all entertainers as well as artists, designers, writers, photographers

(11) Healthcare Practitioners/Technicians and Support including all physicians, nurses, physician's assistants, health care technicians

(12) Protective Service Occupations including all law enforcement and private security personnel

(13) Food Preparation and Serving Related Staff

(14) Building and Grounds Cleaning and Maintenance Staff

(15) Personal Care and Service Staff including hairdressers/barbers, entertainment attendance, animal trainers/caretakers, attendants, child

care and home health care workers, fitness trainers

(16) Sales and Related Staff

(17) Office and Administrative Support Staff

(18) Farming, Fishing, and Forestry Staff

(19) Construction and Extraction Staff

(20) Installation, Maintenance, and Repair Staff

(21) Production Staff including assemblers, fabricators, food processing workers, factory workers

(22) Transportation and Material Moving Staff

(23) Military Personnel

(24) Something else ----------

3. Now I'd like to understand how your company's space is used. In answering this question, please include only the space that your company is currently using. Do not include any space that is currently not in use.

As I read the following ways space might be used, please tell me out of 100%, what percentage of your company's space is currently used in this way? You will have a chance to tell me types of space that are not on the list before we finish the question. What percent of the total space is ***(READ)***? ***(ACCEPT UP TO 4 OTHER SPECIFIES, IF RESPONDENT CANNOT PROVIDE PERCENTAGES, ACCEPT RAW NUMBERS, RANGE OF RESPONSES FOR RAW NUMBERS IS O TO Q., RAW NUMBERS MUST ADD TO Q.S3A; RANGE OF RESPONSES FOR PERCENTAGES IS 1 TO 100, MUST ADD TO 100%, ALLOW DON'T KNOW AND REFUSED)***

	% OF TOTAL USED SPACE
Commercial or retail, including showrooms and display areas	
Office space	
Production space	
Conference rooms, classrooms, auditoriums, etc.	
Common or public space(s) including waiting areas, rest rooms, hallways, etc.	

Storage or warehouse space

Other Please Specify: _____

Other Please Specify: _____

Other Please Specify: _____

Other Please Specify: _____

Total 100%

Interviewer: Is this figure actual or an estimate?

[ ] Actual

[ ] Estimate

4. And finally, so I can enter you in the drawing to win one of 10 Apple iPods, please give me your name, title, company name and address. (DO NOT ACCEPT HOME ADDRESS, MUST PROVIDE COMPANY NAME AND STREET ADDRESS - ASSURE RESPONDENT THAT NAME, COMPANY NAME INFORMATION WILL BE USED ONLY FOR THE DRAWING AND TO VERIFY THAT A SURVEY WAS ACTUALLY COMPLETED, THIS INFORMATION WILL NOT BE RELEASED TO ANY THIRD PARTIES NOR WILL IT BE LINKED TO YOUR INDIVIDUAL RESPONSES)

Name

Job Title

Company Name

Address 1

Address 2

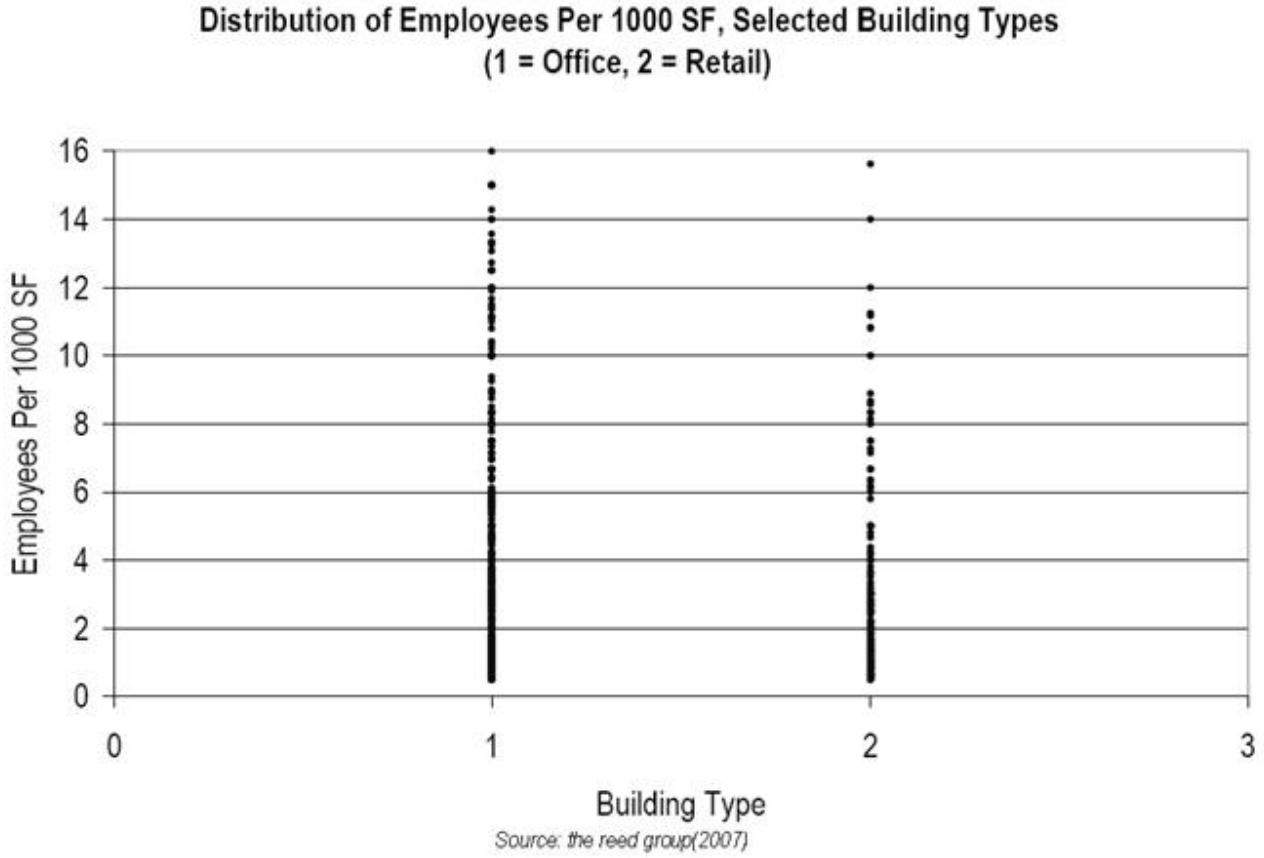
City

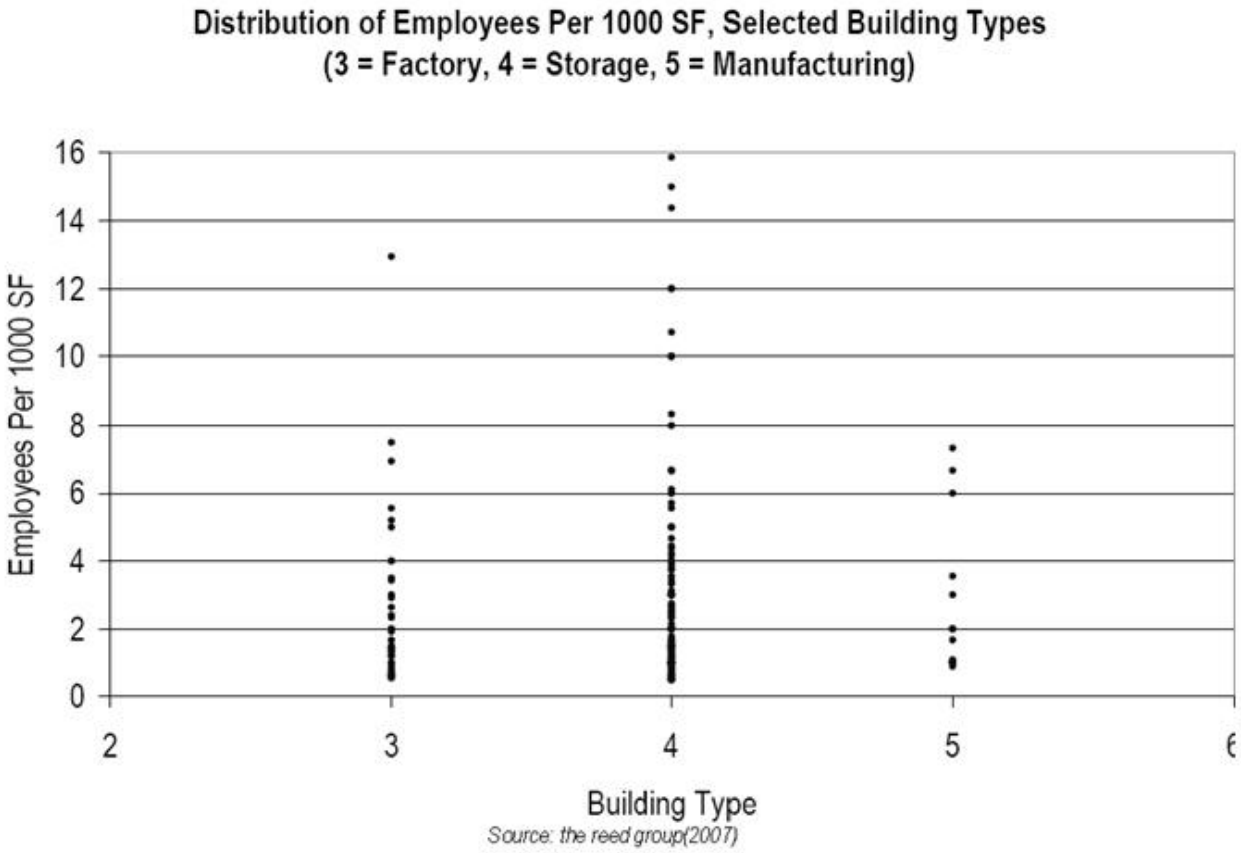
State NJ

Zip

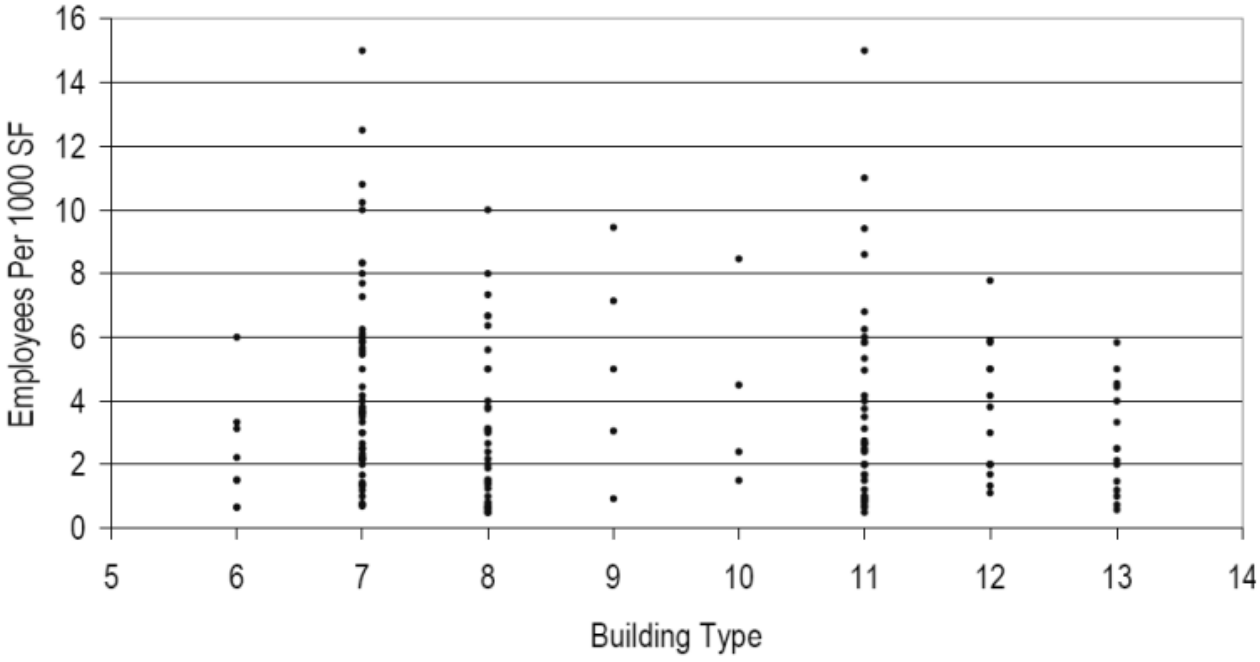
Thank you for taking the time to participate in this survey!

APPENDIX G - ADDITIONAL NEW JERSEY SURVEY RESULTS OF INTEREST




Distribution of Employees Per 1000 SF, Selected Building Types
(3 = Factory, 4 = Storage, 5 = Manufacturing)
Employees Per 1000 SF
16
14
12
10
8
6
4
2
0
2
3
4
5
Building Type
Source: the reed group(2007)

Distribution of Employees Per 1000 SF, Selected Building Types (6 = Theater, 7 = Restaurant, 8 = Library, 9 = Arena, 10 = Stadium, 11 = K-12, 12 = Hospital, 13 = Hotel)



Source: the reed group(2007)

Survey Responses, Selected Building Types and Industries

	S3A Location # employees	S3B Total FT employees	S3C Total PT employees	Q3 % Office space	Empl / 1000SF
Arenas	17	2	15	10	9.44
	40	40		90	0.20
	1	0	1	10	5.00
	2	2		99	0.16
	6	6		5	0.03
	1	1		0	0.93
	1437	728	709	30	3.05
	25	4	21	10	7.14
Stadiums	11	11		100	8.46
	72	65	7	5	2.40
	150	150		25	1.50
	8	6	2	5	26.67
	400	350	50	30	0.29
	9	9	0	75	4.50
Higher Education	1437	728	709	30	3.05
	400	350	50	30	0.29
	160	68	92	20	2.67
	1	1	0	100	1.43
	350	200	150	20	0.41
	990	890	100	7	0.80
	15	12	3	10	0.30
	2	1	1	20	1.67
	57	54	3	40	1.88
	675	317	358	14	1.52

Source: the reed group (2007)

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